

**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS**

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**Report**

TO: Members of the Judicial Council

FROM: Probate and Mental Health Advisory Committee  
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DATE: August 21, 2009

SUBJECT: Probate Conservatorships and Guardianships: *Reviewing the Accountings of Conservators' and Guardians: Guidelines for Probate Examiners and Court Investigators* (Adopt and authorize distribution of Guidelines) (Action Required)

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Issue Statement

Recent changes in conservatorship and guardianship law have provided courts with new tools to apply to the review of accountings filed for court approval by conservators and guardians. These changes have expanded the role of court investigators in evaluating accountings filed by conservators and provide judicial officers and probate examiners with new opportunities to ensure that accountings filed by both conservators and guardians are honest, accurate, and complete.

Courts must train their investigators and examiners in new techniques available for the review and analysis of the accountings filed by conservators and guardians. To help courts in that effort, the Legislature has directed the Judicial Council to develop guidelines to assist court investigators and examiners in reviewing accountings filed by these fiduciaries and detecting fraud.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective on the date of adoption:

1. Adopt and authorize distribution of *Reviewing the Accountings of Conservators and Guardians: Guidelines for Probate Examiners and Court Investigators* (guidelines) to the superior courts and incorporation into curricula of the Administrative Office of the Courts' (AOC) Education Division/Center for Judicial Education and Research (CJER) and court-sponsored training programs for these court staff positions; and
2. Delegate authority to the Administrative Director of the Courts, in consultation with this advisory committee, court investigators, court staff attorneys, probate examiners, and others in his discretion; to revise the guidelines from time to time as necessary or advisable, working with the Trial Court Presiding Judges and Court Executive Advisory Committees, the Probate and Mental Health Education Committee, and the AOC's Education Division/CJER.

A copy of *Reviewing the Accountings of Conservators and Guardians: Guidelines for Probate Examiners and Court Investigators* is attached following this report.

#### Rationale for Recommendation

Legislation in 2006 and 2007<sup>1</sup> changed the scope and timing of investigators' responsibilities in conservatorships and increased options available to courts in enforcing compliance with accounting requirements for conservators and guardians. The following were among the changes made by this legislation:

1. The number and frequency of mandatory review investigations and reports by court investigators following the appointment of a conservator have increased and are no longer limited to the schedule of required accountings.<sup>2</sup>
2. To the extent feasible, the court must coordinate review investigations with the filing of accountings so that court investigators may review the accountings before visiting the conservatee.
3. The court investigator's report of a review investigation includes a determination of whether the conservator is acting in the best interest of the conservatee. This determination requires the investigator to evaluate the conservatee's placement; quality of care, including physical and mental treatment; and finances.

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<sup>1</sup> Stats. 2006, ch. 493 (Assem. Bill 1363); Stats. 2007, ch. 553 (Assem. Bill 1727).

<sup>2</sup> Former law required court investigators to conduct review investigations and make written reports to the court after the first year of the conservatorship and biennially thereafter. That is the schedule required for accountings then and now, subject to the court's discretion to order them more frequently. Current law requires review investigations and reports six months after the appointment of a conservator, at the end of the first year, and annually thereafter, although the court may permit a full report to be deferred for two years after any annual review, with only a status report required in the off year, if the court concludes that the conservator is acting in the best interest of the conservatee. Even in the off year, however, a full investigation is still required and the status report is not significantly less thorough than a full report.

4. To the greatest extent possible, the court investigator must interview the persons entitled to notice of the petition for appointment of a conservator to determine whether the conservator is acting in the best interest of the conservatee.
5. The court investigator must, if practicable, during the personal interview required for a review investigation, review the accounting with a conservatee with sufficient capacity.
6. Copies of reports of review investigations must be mailed to the conservatee's spouse or registered domestic partner and relatives in the first degree (parents and children) or, if none, to the closest relative.
7. In response to a court investigator's report the court may, on its own motion or on request of any interested person (including any person who receives a copy of the report), order an accounting or another review investigation that may include a noticed court hearing.
8. In response to legislative direction, the Judicial Council has defined and established requirements for standard and simplified accountings by conservators and guardians and has adopted or approved and prescribed the use of Judicial Council forms for schedules in both types of accountings.
9. Professional fiduciaries must file with their accountings original statements of all financial institution accounts showing the balances as of all periods covered by the accountings.<sup>3</sup> All conservators and guardians must also file escrow closing statements showing charges and credits for any sales of estate real property during the period of the accountings and original statements for care of the conservatee in a residential care or long term care facility.
10. Each accounting of a conservator or guardian is subject to random or discretionary full or partial review by the court, including consideration of any information necessary to determine the accounting's accuracy. The court must make findings concerning the severity of any material error in the accounting and any further appropriate action in response. Further actions may include immediate suspension of the conservator or guardian without further notice of proceedings and appointment of a temporary successor, or removal and appointment of a successor.
11. The conservator or guardian must make available for inspection and copying, on reasonable notice, to any person designated by the court to verify the accuracy of

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<sup>3</sup> Nonprofessional conservators and guardians must file financial institution account statements showing the balance in each account immediately before the appointment of a conservator or guardian for the first accounting; and with each accounting, the statements showing the balances in each account at a financial institution at the end of each accounting period.

the accounting, all books and records of the conservatorship or guardianship, including receipts for expenditures.

12. Failure of a professional fiduciary to file an accounting with all required documents in a conservatorship or guardianship and to set it for hearing must be reported by the court to the Professional Fiduciaries Bureau, the professional fiduciary licensing body created by the 2006 legislation.

In response to a statutory directive in the 2007 legislation,<sup>4</sup> the Probate and Mental Health Advisory Committee, working with judicial officers, court investigators, and probate staff attorneys and examiners from several courts, has developed and is proposing the adoption of the attached guidelines for probate examiners and court investigators in reviewing accountings of conservators and guardians to detect fraud and other problems in the management of the estates of conservatees and wards.

The proposed guidelines are divided into two parts. The first part is composed of specific recommendations concerning the review of accountings of conservators and guardians (1) by examiners in connection with settlement of the accountings, and (2) by court investigators as part of their review investigations in conservatorships beginning with the first annual review after appointment of the conservator. The second part is contained in Attachment A, beginning on page A-1, immediately following page 10 of the guidelines.

Attachment A is a summary of statutory and rule provisions addressing court staff review of accountings in conservatorships and guardianships and court powers affecting these accountings. These provisions govern the timing and coordination of accountings and review investigations in conservatorships, identify supporting documents that must accompany conservators' and guardians' accountings, establish requirements for the format of these accountings and the role of Judicial Council forms in their preparation, and prescribe the powers of the court concerning them.

The guidelines address the following areas:

1. Coordinating accountings and review investigations in conservatorships;
2. Accountings of conservators and guardians who are not professionals;
3. Managing conservators and guardians having difficulty with their accountings;
4. Recommendations when a conservatorship review investigation is not coordinated with an accounting;

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<sup>4</sup> Probate Code section 2620.1, added by Stats. 2007, ch. 553 (Assem. Bill 1727), § 21.

5. Things to look for in a conservator's or guardian's accounting;
6. Coordinating the work of examiners and investigators; and
7. Special concerns in reviewing accountings of professional fiduciaries and selecting accountings for audits or other special scrutiny.

Each of the areas contains recommendations for examiners and investigators. The recommendations reflect a fundamental difference between the roles of these two court staff positions or functions in connection with a fiduciary's accounting.

Staff attorneys or examiners review accountings of conservators and guardians primarily in connection with their settlement. Court investigators review conservators' accountings for a different purpose. The accountings are an important part of the background with which investigators must be familiar to conduct annual review investigations in conservatorships, which include personal visits with conservatees away from the courthouse and required communications between investigators and conservators.<sup>5</sup>

An investigator can become, in effect, an auditor of a conservator's accounting although he or she ordinarily has no formal role in its settlement by the court. The investigator's personal contact with the conservatee in the conservatee's home or other personal living situation gives the investigator an opportunity to verify or confirm that expenditures for the conservatee's support and maintenance shown in the conservator's latest accounting are in fact being applied for those purposes. The guidelines emphasize this auditor's role. (See, for example, the recommendations to investigators at pages 7 and 8.)

The guidelines recommend also that examiners and investigators attempt to identify conservators and guardians who might be expected to have difficulty with accountings, as soon as possible after their appointment. (See the guidelines at pages 3–5.) The guidelines include recommendations on helping conservators and guardians avoid late filing and other common problems with accountings, as well as recommendations concerning court sanctions against these fiduciaries for failure to comply with statutory requirements.

Finally, the guidelines include specific recommendations concerning professional fiduciaries. (See pages 9 and 10.) These include recommendations to implement a program of random audits of accountings of professional fiduciaries, and to

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<sup>5</sup> There are no review investigations or other regularly-scheduled mandatory functions performed by court investigators in guardianships after the appointment of a guardian.

coordinate examinations of accountings of some professional fiduciaries in more than one matter in a court or in matters filed by them in more than one court.

### Alternative Actions Considered

The guidelines are specifically required by statute, although their legal definition and weight—as rules of court, standards of judicial administration, or something else—are not prescribed in the legislation. The committee initially considered proposing the guidelines as standards of judicial administration but decided against this alternative because the council has increasingly departed from the adoption of standards in recent years in favor of rules of court. The committee believes that the guidelines are not suitable as rules of court because they are intended primarily as recommendations, not directives that must or can be followed in every situation and in every court.

The advisory committee also considered developing the guidelines entirely as training material for court staff and judicial officers without formal Judicial Council action but determined that council action is necessary because the statute assigns responsibility for development of the guidelines specifically to the council.

### Comments From Interested Parties

This proposal was circulated for public comment in spring 2009, to a list of judicial officers, probate examiners and attorneys; court investigators and other court staff interested in probate matters; the State Bar's Trusts and Estates Section and probate-interest sections of local bar associations; and representatives of other organizations interested in probate matters. The proposal was also circulated to court executive officers, presiding judges, individuals, and organizations with a more general interest in court-related issues.

Twenty-five comments were received. Six commentators approved the guidelines without changes. Twelve approved them with suggested modifications. Eight commentators opposed the guidelines entirely.<sup>6</sup> A chart showing the comments received and the committee's responses is attached at pages 12–61.<sup>7</sup>

In addition to circulation for public comment, this proposal was presented to and discussed at a meeting of the Joint Rules Working Group of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee. The working group's comment is comment no. 8. Ms. Mary Beth Todd, Executive Officer

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<sup>6</sup> One commentator, Pamela J. Williams (comment no. 24), a court investigator from the Superior Court of Marin County, approved a portion of the guidelines if modified and did not agree with other portions.

<sup>7</sup> Although the comment chart follows the proposed guidelines, its pages are numbered consecutively to this report. The attached guidelines are paginated as a separate document to reduce confusion in page references to portions of the document in this report and in the comment chart.

of the Superior Court of Calaveras County, a member of the working group, also commented on behalf of her court, comment no. 19.

The joint working group's principal concern is that the guidelines directed at probate examiners are based on the assumption that all courts have probate examiners or staff probate attorneys who perform the duties of examiners. But some courts have neither probate attorneys nor examiners. If the functions of examiners described in the guidelines are performed at all in these courts, they are performed by clerks or court investigators. The working group asked that the duties of examiners described in the guidelines be function-based—that is, described without regard to the actual staff positions of the persons performing them.<sup>8</sup>

The committee responded affirmatively to the working group's concern. The guidelines were revised by adding the following paragraph on page 2:

These guidelines are . . . made with the understanding that in some courts, the duties of probate staff attorneys or probate examiners described in these guidelines are performed by persons who do not hold those specific job titles or job specifications. The guidelines are intended to apply to persons who actually perform the tasks of staff probate attorneys or probate examiners described in the guidelines, without regard to their actual positions, status as employees or under contracts with courts, or formal job descriptions.

The working group also expressed concern about the courts' obligation to comply with the guidelines and the sanctions for noncompliance, and the financial impact on the courts in following them. In response to this and similar concerns expressed by other court-connected commentators about their ability to follow the guidelines because of budget and staffing limitations in the current environment and the committee's own concern that the guidelines could become the minimum standard of practice for courts and court staff, the committee revised the guidelines by adding the following statement as the opening paragraph on page 2:

These guidelines are recommendations for best practices. They are not intended to represent or establish minimum standards of practice by courts or court staff for any purpose. The guidelines are subject to constraints imposed by each court's staffing, caseload, and funding. (Bold text in original.)

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<sup>8</sup> Court investigators, unlike probate examiners or probate staff attorneys, are required by statute. They are officers or "special appointees" of the court (Prob. Code, § 1454). Many courts, and all the larger courts, directly employ staff court investigators. Other courts contract with counties or other organizations to provide qualified persons, such as county probation officers on a shared-time basis with their county employment, to perform the statutory duties of court investigators.

Statements emphasizing that the guidelines are recommendations only were also added throughout the text.

Comments were received from four practicing attorneys, the Executive Committee of the California State Bar Association's Trusts and Estates Section, and the Orange County Bar Association. Although the executive committee's comment was generally favorable, with only minor recommendations for specific clarifications, and the Orange County Bar Association's comment was entirely favorable, the individual practicing attorneys were opposed to the guidelines. In their view, the guidelines overemphasize minor technical defects in accountings prepared by family-member nonprofessional conservators, and do not give these fiduciaries enough credit for their daily care giving activities, love, and support for the conservatee.<sup>9</sup>

The committee's responses to these comments emphasize that the guidelines do not require court investigators, when they evaluate and make recommendations to judicial officers concerning the performance of family-member conservators, to focus on minor or trivial errors in accountings by these conservators, disregard the cost to modest estates of increased court attention to the accounting approval process, or diminish the value of the personal care and attention that these conservators give to their conservatees.

A specific recommendation by attorney Patricia Tobin requests a simplified accounting procedure for nonprofessional fiduciaries that would permit submission of copies of bank statements and check registers in lieu of detailed receipts and disbursements schedules. The committee believes this recommendation has merit and will study it further. But authorization for such a procedure would require legislation; accountings of conservators, guardians, and personal representatives of decedents' estates are subject to detailed statutory structural requirements, particularly Probate Code sections 1060–1064.<sup>10</sup>

Ms. Tobin also recommends that fiduciaries be permitted to submit accounting schedules prepared on Quicken or other financial and accounting software instead of on Judicial Council form schedules. The committee's response advises that rule 7.575 of the California Rules of Court permits conservators and guardians that file their

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<sup>9</sup> See the comments of Patricia Tobin, comment no. 18, cited by several other attorney commentators: Elizabethanne Miller Angevine, comment no. 1; Edward E. Hawkins, comment no. 5; and Martha Jo Patterson, comment no. 11.

<sup>10</sup> Probate Code section 1060 requires all accountings filed with the court to comply with sections 1060–1064 and provides that unless specifically provided elsewhere in the Probate Code or good cause is shown, no information in addition to that required by those sections need be contained in the accounting. Sections 1061–1064 contain detailed requirements for schedules and information to be included in accountings and accompanying reports. Section 2620(a) applies sections 1060–1064 to the accountings of conservators and guardians.



accountings in the standard account format described in the rule to use any method to prepare their schedules, including accounting software. The only Judicial Council form that must be used is the *Summary of Account—Standard and Simplified Accounts* (form GC-400(SUM)/GC-405(SUM)) to show the totals from all the schedules.

Twelve court investigators and examiners, including five from the Superior Court of San Francisco County, commented on the proposal.<sup>11</sup> The comments from the San Francisco investigators and examiners were generally unfavorable, with an emphasis on the cost and difficulty of following the recommendations in the current budget and staffing environment. Detailed responses to these comments are provided in the accompanying chart.

One specific suggestion by San Francisco investigators Jeanine Lim and Shauna Gillespie-Ford was accepted by the committee. They opposed a recommendation in the guidelines circulated for comment that investigators' notes of interviews with the (proposed) conservator should be retained. Their main concern is that these notes could be subpoenaed by participants in later litigation, such as a will contest after the conservatee's death. The recommendation was deleted from the guidelines.

Several court-investigator commentators recommended that a working group of examiners and investigators be convened to develop tools for reviewing accountings and making recommendations to courts or to assist in evaluating and revising the guidelines.<sup>12</sup> The committee supports this recommendation. Plans are underway to have the guidelines be the focus of discussion at future CJER Probate Conservatorship and Guardianship Institutes for Court Investigators, and to set up other forums for investigators and examiners to confer and recommend modifications after their initial experience with the guidelines.<sup>13</sup> The advisory committee will also ask investigators and examiners outside the committee to review the guidelines and recommend revisions to the committee on a regular basis.

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<sup>11</sup> The San Francisco investigators or examiners are Shauna Gillespie-Ford, comment no. 4; Jeanine Lim, comment no. 7; Helen Yune Trowbridge, comment no. 20; Trudy Verzosa, comment no. 22; and Cynthia Webb-Beckford, comment no. 23.

<sup>12</sup> See comments of Dee Dee Blackwood, comment no. 2; Victoria Ghaoui, comment no. 3; Superior Court of Marin County (Shauna McDonough), comment no. 13; Pamela J. Williams, comment no. 24.

<sup>13</sup> The first CJER Probate Conservatorship and Guardianship Institute for Court Investigators will be held in San Diego in September of this year. The guidelines are not in the program for that institute because they will not have been adopted by the council when it is held. However, the guidelines would be a focus of future institutes and would also be reviewed and discussed by judicial officers, court staff probate attorneys, and probate examiners at CJER Probate Institutes when improved budget conditions permit the resumption of that annual statewide program.

Some commentators point to the difficulty of coordinating review investigations with accountings due at the same time (see comments of Daniel McNamara, comment no. 9; Superior Court of Tulare County (Mary Beth Hash), comment no. 17; Christopher J. Wurbel, comment no. 25). This is a problem that cannot be entirely solved under the current statutory scheme, which does not permit an indefinite delay in the review investigation to wait for a tardy accounting.

The committee's response notes that the deadlines for review investigations permit some delay, in that the statute requires the investigations on the anniversary of the appointment of a conservator or the last review investigation, but the statute does not expressly require more than that the investigation must *commence* on that date. Completion of the investigation and submission of the court investigator's report to the court may occur later. In the case of investigations after the first annual review, the statute permits the period to run from the date of the report following the previous review investigation, not from the date that investigation commenced.

The committee will consider whether a recommendation is appropriate for changes in the law to permit greater flexibility in the scheduling of review investigations so as to promote greater coordination between accountings and investigations, but suggests that courts first attempt to ensure that accountings are timely filed. The guidelines' recommendations to identify conservators and guardians likely to have difficulties with accountings at an early stage in the proceedings are intended to improve compliance with statutory time requirements for accountings.

Pamela J. Williams, a court investigator from the Superior Court of Marin County, is concerned that there may be a conflict of interest for court investigators to provide recommended guidance and instruction to conservators concerning their accounting responsibilities. The committee does not believe that education and training provided by investigators to these fiduciaries would present a conflict of interest any more than any other fiduciary training program offered by the court. The committee is confident that court investigators involved in these efforts will be able to report failures as well as successes to the court concerning compliance by conservators with accounting requirements. The assistance provided by court investigators to nonprofessional conservators will mean greater compliance with accounting requirements by nonprofessional conservators, thereby benefiting courts, conservatees, and the conservators themselves.

Ms. Williams, formerly a member of this advisory committee and manager of court investigators in the Superior Court of Alameda County, made a number of specific recommendations that the committee supports. These will be considered for addition to the guidelines at a later time (see comment chart at pages 56–58).

### Implementation Requirements and Costs

The committee anticipates no significant initial costs in implementing the proposed guidelines. Their principal use will be as curricula for court staff training. However, to the extent the guidelines' recommendations are followed in practice, they may result in greater activity of investigators and examiners in earlier stages of conservatorships and, to a lesser extent, guardianships. This activity will incur additional personnel costs but should be offset over time by savings to the courts and to the estates of conservatees and wards through improved compliance with accounting requirements by conservators and guardians.

The Joint Rules Working Group prepared an operational impact summary on this proposal that expressed concern that the guidelines could have a significant impact on court operations if they are treated as a mandate to small courts to add court staff to perform the duties of examiners described in the guidelines. The committee responded to similar concerns expressed in the working group's public comment and that of working group member Mary Beth Todd by adding the text at page 2 of the guidelines quoted above on page 7, and the following at the end of its response to Ms. Todd's comment:

Court investigators are required by statute (Prob. Code, § 1454). Examiners are not. The duties of examiners in smaller courts are often performed by court clerks or by court investigators or, in courts in the least populous counties, are not regularly performed at all because there are not enough probate matters in those courts to require probate calendar clearing on a regular or systematic basis. *The guidelines are not intended to change that reality.* (Italics added.)

Attachments



# Reviewing the Accountings of Conservators and Guardians

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GUIDELINES FOR PROBATE  
EXAMINERS AND COURT  
INVESTIGATORS

OCTOBER 23, 2009



JUDICIAL COUNCIL  
OF CALIFORNIA



## **Reviewing the Accountings of Conservators and Guardians: Guidelines for Probate Examiners and Court Investigators**

Recent legislation has clarified existing law concerning accountings filed with courts by conservators and guardians.<sup>1</sup> This legislation is intended to assist the courts in meeting their responsibility to see that the accountings and the reports filed with them fully and accurately disclose the personal and financial condition of conservatees and wards.

The recent legislation also gives court investigators greater access to and use of accountings to aid them in their mandatory post-appointment reviews in conservatorships. Court investigators will be able to use their investigative skills and experience to help probate examiners and judicial officers evaluate and settle conservatorship accountings, particularly in the great majority of cases where no one has filed formal objections to the accountings that would require contested litigation. Investigators and examiners will increasingly perform accounting audit functions in such cases by verifying receipts and disbursements shown in the accountings and confirming that expenditures ostensibly made for the benefit of the conservatee are actually applied to that purpose.

Probate Code section 2620.1<sup>2</sup> provides:

The Judicial Council shall, by January 1, 2009, develop guidelines to assist investigators and examiners in reviewing accountings and detecting fraud.

The Judicial Council's Probate and Mental Health Advisory Committee, working with judicial officers, court investigators, and probate staff attorneys and examiners from several courts, has developed the following guidelines in response to the statutory directive. These guidelines are recommended by the advisory committee for distribution to the probate departments of the superior courts and for inclusion in curricula of education programs for probate court staff sponsored or supported by the Administrative Office of the Courts' Education Division/Center for Judicial Education and Research (CJER). The advisory committee further recommends that the guidelines be used to stimulate exchanges of best practices by probate departments throughout the state.

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<sup>1</sup> Attachment A following these guidelines contains a summary of current law concerning accountings of conservators and guardians.

<sup>2</sup> Added to the Probate Code in 2007 by Assembly Bill 1727 (Stats. 2007, ch. 553, § 21).

**These guidelines are recommendations for best practices. They are not intended to represent or establish minimum standards of practice by courts or court staff for any purpose. The guidelines are subject to constraints imposed by each court's staffing, caseload, and funding.**

The advisory committee has developed these guidelines also with the understanding that in some courts, the duties of probate staff attorneys or probate examiners described in the guidelines are performed by persons who do not hold those specific job titles or job specifications. The guidelines are intended to apply to persons who actually perform the tasks of staff probate attorneys or probate examiners described in the guidelines, without regard to their actual positions, status as employees or under contracts with courts, or formal job descriptions.

*A. Coordination of accountings and review investigations in conservatorships*

The most important time to coordinate a review investigation with an accounting in a conservatorship is at the end of the first year after commencement of the proceeding, when the first annual review investigation is required and the first accounting is due.<sup>3</sup> Considerations supporting this conclusion include the following:

1. At the first-year anniversary the court must decide for the first time in the case whether to waive an annual full review investigation and report at the end of the following year.
2. Ideally, this decision should be made only after a full review of the conservator's accounting, except perhaps in the smaller and less complicated estates.
3. If the accounting is late and therefore is not available at the time of the first annual review investigation, the court may justifiably conclude from that fact alone that a full annual review investigation should not be waived, at least until one or more accountings have been filed in time to be considered in a later review investigation.
4. The court has the opportunity for the first time in the case to see whether a nonprofessional conservator is reasonably capable of preparing and presenting a complete and timely accounting. A conservator who shows difficulty with the first accounting could be a candidate for more frequent accountings that are coordinated with later reviews.

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<sup>3</sup> A review investigation is coordinated with an accounting if the accounting is filed in time to be reviewed and considered by the investigator before he or she visits the conservatee. (See Prob. Code, §§ 1851(a), 1851.2.)

5. Unless the court orders more frequent accountings or does not waive the annual full review investigation and report, the next possibility for a coordinated accounting and a full review investigation and report would be at the end of the third year of the conservatorship.

B. *Accountings and nonprofessional conservators and guardians*

Early identification of newly-appointed nonprofessional conservators and guardians who might be expected to have difficulty completing and filing timely and complete accountings is encouraged. Some or all of the following techniques may be useful to accomplish this goal.

1. Examiners may:
  - a. Identify and flag files of conservators and guardians who fail to attend available court-sponsored training on accounting issues or who demonstrate unusual difficulty in understanding the training they do receive.
  - b. Identify and flag files of conservators and guardians who show difficulty in preparing a complete inventory of the cash and noncash assets of the estate, obtaining an appraisal of the noncash assets from the probate referee, or timely filing the completed Inventory and Appraisal in the first year of the case.
  - c. In each new case involving a conservator with a flagged file, communicate with the investigator who conducted the initial investigation as soon as possible, well before the first accounting is due in the case and, if possible, before the investigator schedules the first (six-month) review investigation.
2. Investigators are encouraged to:
  - a. Learn as much as possible about the conservator's education, experience, and background when interviewing a nonprofessional proposed conservator at the time of the initial investigation or the six-month review investigation following the conservator's appointment. If possible, be prepared to discuss relevant portions of the conservator's background and experience with the examiner who will review the first accounting.



- b. Include findings in reports to the court and communicate with examiners about potential difficulties with accountings that they foresee. Significant apparent difficulties may:
  - (1) Support a recommendation in an initial investigation report that appointment of counsel would be helpful to a resolution of the matter or necessary to protect the interest of the proposed conservatee; or
  - (2) Be relevant, in a review investigation, to the investigator's examination of the conservatee's finances or determination whether the conservator is acting in the best interest of the conservatee.
- c. Open an early dialogue with the appointed probate referee concerning a newly-appointed conservator who is having difficulty with the inventory and appraisal.

C. *Managing conservators and guardians whose files have been flagged*

- 1. Examiners may consider recommending a brief continuance of all or a portion of the settlement of a first accounting in an appropriate case to permit the investigator to complete the first annual review investigation and report before the accounting is approved by the court.
- 2. Investigators are encouraged to:
  - a. If practicable, when interviewing a conservator with a flagged file as part of the first (six-month) review investigation:
    - (1) Briefly review with the conservator his or her recordkeeping practices and recommend appropriate changes.
    - (2) Discuss and emphasize the requirements for conservators of estates prescribed in rule 7.1059(b) of the California Rules of Court.
    - (3) Ask the conservator to review again and implement recommendations for estate management and recordkeeping contained in the Judicial Council of California's *Handbook for Conservators* as well as the statement of the duties of a conservator of the estate in the *Duties of Conservator and Acknowledgment of Receipt of Handbook* (Judicial Council form GC-348).

(4) Recommend to the conservator that he or she voluntarily participate in training offered or sponsored by the court to nonprofessional conservators. Advise the court of these recommendations in the report, to establish a record supporting possible later court-ordered participation.

(5) Remind the conservator of the upcoming deadline for the first accounting and the importance of meeting that deadline and filing a complete accounting.

(6) Include a summary of the accounting-related matters discussed with the conservator in the report of the review investigation.

- b. Consider recommending to the court in appropriate cases that the court establish a firm date for the filing of the first accounting before the annual review date and strictly enforce the sanctions of Probate Code section 2620.2 for failure to timely file the accounting.

D. *If an accounting and a conservatorship review investigation are not coordinated, and if time, workload, and resources permit*

1. It is recommended that examiners:

- a. Review the investigator's prior reports in the case when reviewing an accounting for its settlement. These may trigger lines of inquiry or examination and raise questions about the accounting.
- b. Talk to the investigator about the conservatee's situation and the investigator's impressions about the conservator or any of the other persons involved in the case.

2. Investigators are encouraged to:

- a. Review the last accounting in the file even if it is not coordinated with the current review investigation and even if it was approved by the court without a review investigation that specifically addressed it.
- b. Become familiar with the first accounting in every case. The first accounting establishes a baseline to compare with all later accountings.
- c. Compare the last accounting's income and expenditures and assets on hand with the conservatee's current living situation at the time of the next review investigation even if the accounting is for a period ending before the date of that review and even if the accounting was approved by the court. This comparison could spot problems that could be

addressed at the next accounting or cause the court to take other remedial action before the next accounting is filed.

E. *What to look for in a conservatorship or guardianship accounting*

1. Examiners:

The examiner's review of a conservatorship or guardianship accounting for purposes of its settlement gives the examiner an opportunity to question any expenses that seem unreasonable. The following are examples of issues that may merit concern and additional scrutiny:

- a. Are the costs of utilities, taxes, insurance, or repairs for the conservatee's real property charged to the conservatee's estate even though he or she is in a care facility?
- b. Is there an excessive amount of money, compared to the size of the estate and other needs, expended for one service, e.g., \$7,000 for monthly acupuncture when the total estate is under \$100,000?
- c. Are there entries for bank fees for insufficient funds?
- d. Are there numerous entries for cash, credit card transactions, or reimbursements to the conservator or guardian with no explanation or a vague explanation of their use or purpose?
- e. Are cash payments being made directly to the conservatee or ward without an allowance order?
- f. Are the caregiver costs reasonable for the area served by the court? Is a relative of the conservatee or the conservator providing the care?
- g. Are property rehabilitation or improvement expenditures reasonable for the area where the property is located and for the particular property?
- h. What is the relationship between the conservator or guardian and any persons contracted to do work on the property of the estate?
- i. In all cases, but particularly if there is a relationship between the conservator and the contractor, does the contractor hold the required licenses for the work, have appropriate experience and training for the job, and are the charges reasonable?

- j. Is there a conflict of interest under rule 7.1059(a) of the California Rules of Court? The following are examples:
  - (1) If an agency is acting as a conservator but also has a department that does home care, are all of the agency's conservatees receiving care from that department? Can that be justified?
  - (2) Are employees or relatives of the conservator receiving payments from the estate for services that should be part of the conservator's request for compensation?
- k. Is the conservatorship or guardianship estate invested and managed in accord with the requirements of rule 7.1059(b) or 7.1009(b) of the California Rules of Court?
- l. Is there cash in a bank account or insured money market fund in excess of FDIC limits?
- m. Are payroll taxes being paid for the caregiver? Should they be?
- n. If the accounting is a second or later account, has the conservator or guardian improved on earlier accountings?
- o. Does the conservator or guardian appear to understand rule 7.575 of the California Rules of Court and the proper use of Judicial Council forms for accounting schedules of standard or simplified accounts?
- p. If the account is in the simplified account format under rule 7.575, should a recommendation be made to the court to require the account or future accounts to be prepared in the standard format?

## 2. Investigators

An investigator, unlike an examiner, has an opportunity to see the conservatee in his or her living situation. An investigator's review of the accounting enables the investigator to compare the accounting's representations of estate expenditures and income with the conservatee's actual circumstances.

- a. If an investigator sees something of concern during an investigation, whether or not there is a current accounting to review, he or she should consider, if time permits, reviewing earlier accountings and investigation reports to see whether the problem actually was apparent at an earlier stage of the case.

- b. The following are examples of issues the investigator might see:
- (1) Are there car payments, auto insurance, car maintenance, or gasoline expenses shown in the accounting when the conservatee is bedridden? If so, why?
  - (2) Is the automobile actually used entirely or even significantly for the conservatee's travel? What other uses does it have, and who uses it?
  - (3) If the accounting lists expenses for clothing, a television, a computer, or any other items, does the conservatee actually have access to and actually use them? If not, why not?
  - (4) Is the conservatee living in a care facility but has a home? Is the home rented for the benefit of the conservatee? If not, why not?
    - (a) Some reasons could be acceptable, e.g., the house is being rehabilitated so the conservatee can return to it, or the house is in such a state that it cannot be rented and must be either rehabilitated for this purpose or sold.
    - (b) Other reasons may not be acceptable, such as that the conservator's family member or the conservatee's "friend" or former caregiver is living in the residence without paying rent or paying less than market rent to the estate.
  - (5) If the accounting lists rehabilitation or improvement expenditures for the conservatee's real property, was the work actually done on that property?

F. *Coordination of the work of investigators and examiners*

1. An investigator may consider raising issues he or she sees during a review investigation for the examiner to address in the examiner's review of an accounting for settlement. Examples include:
  - a. The conservatee is not actually receiving a court-approved cash allowance, directly or through a care facility's finance office.
  - b. There is a pet but there are no expenses for it in the accounting; or there is no pet but expenses for a pet do appear in the accounting.

- c. The conservatee is living in a fashion that is not consistent with her former lifestyle or the size of her estate. (Note: Some wealthy conservatees do not want to live luxuriously—they acquired or preserved their assets by being frugal and they remain so.)
2. If an investigator or examiner has strong concerns about an accounting, he or she should consider recommending to the court that the conservator or guardian be directed to produce original records and other documents for further investigation.

G. *Special concerns in reviewing the accountings of professional conservators and guardians and selecting accountings for audits or other special scrutiny*

1. If time, workload, and available court resources permit, investigators and examiners may consider reviewing and comparing current and past accountings of professional conservators in all or a representative number of their open cases pending in the court to see patterns of conservatee placements, relationships with medical and other service providers and care facilities, expenditures, asset investments, and requests for compensation.
2. Probate departments of courts located in areas with active professional fiduciaries may consider implementing a program to randomly select accountings of these fiduciaries for detailed scrutiny, including production of original documents and submission of the accountings to forensic accountants or other experts appointed by the court. Professional fiduciaries should be advised in advance that their accountings filed in the court will be subject to this treatment.
3. Investigators or examiners who develop concerns about a professional fiduciary's accounting may consider recommending to the court closer review of that fiduciary's other matters in the court.
4. A court may consider advising probate departments of neighboring courts about any concerns about a professional fiduciary's accountings filed in that court.
5. Regular communication is encouraged between investigators and the Professional Fiduciaries Bureau concerning information about professional fiduciaries licensed by the bureau that have open matters in the investigators' court.
6. Accountings of nonprofessional conservators and guardians should also be randomly selected for detailed scrutiny, and these fiduciaries should be made aware that this is a possibility.

7. In the case of moderately sized estates managed by nonprofessionals, this scrutiny may take the form of audits of one or more particular individual transactions shown in an accounting rather than a full audit of the entire accounting, including an examination of all original documents in connection with particular receipts, investments, or disbursements, and verification of the actual use of any property purchased or leased.

## Attachment A

### Statutory Framework for Court Staff Review of Fiduciary Accountings in Conservatorships and Guardianships

#### A. *Timing of accountings and investigations*

1. Accountings in conservatorships and guardianships must be presented to the court for settlement and allowance (that is, filed, not necessarily heard or settled by the court within the time permitted) (Prob. Code, § 2620(a)):
  - a. At the expiration of one year from the time of appointment; and
  - b. Thereafter not less often than biennially, unless ordered more frequently by the court.
2. Post-appointment review investigations and reports by court investigators are required or authorized in conservatorships (there are no mandatory post-appointment review investigations in guardianships):
  - a. At the expiration of six months after the initial appointment of the conservator (Prob. Code, § 1850(a)(1)); and
  - b. One year after the appointment of the conservator and annually thereafter:
    - (1) Unless the court, at the first annual review and at each review thereafter, elects to set the following full review and report in two years if the court determines that the conservator is acting in the best interest of the conservatee) (Prob. Code, § 1850(a)(2)).
    - (2) In that event, there is an investigation and report in the off year, including a personal visit with the conservatee, but only a “status report” must be filed. The status report addresses whether (a) the conservatorship is still warranted, and (b) the conservator is continuing to act in the best interest of the conservatee.
    - (3) The full review requires a more extensive full report than the status report. (See Prob. Code, § 1851(b)(1)).



*B. Coordination of review investigations and accountings*

1. The court must, if feasible, coordinate conservatorship review investigations and the filing of conservators' accountings so that investigators may review accountings before visiting conservatees (Prob. Code, § 1851.2).
2. If practicable, during the review investigation the court investigator must review the accounting with a conservatee with sufficient capacity (Prob. Code § 1851(a)).

*C. Supporting documents filed with an accounting*

Conservators and guardians must file the following supporting documents with their accountings (Prob. Code, § 2620(c)):

1. Original account statements of all "institutions" under Probate Code section 2890 and "financial institutions" under section 2892<sup>1</sup> in which money or property of the estate are deposited. This means:
  - a. For nonprofessional fiduciaries filing their first accounting, account statements showing the balances of each account immediately before the appointment date and as of the closing date of the account.
  - b. For professional fiduciaries, account statements showing the account balances as of all periods covered by the accounting.<sup>2</sup>
  - c. Original escrow closing statements for all real property sales reflected in the accounting.
  - d. Original statements from residential care or long term care facilities where the conservatee resided during the period of the accounting.

*D. Format of the accounting*

Accounts of guardians and conservators must be presented in either the standard account or simplified account formats described in rule 7.575 of the California Rules of Court.

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<sup>1</sup> An "institution" is an insurance company, insurance broker, insurance agent, investment company, investment bank, securities broker-dealer, investment adviser, financial planner, financial adviser, or any other person or entity that takes, holds, or controls an asset subject to a conservatorship or guardianship that is not a "financial institution." A "financial institution" is a bank, trust, savings and loan association, savings bank, industrial bank, or credit union.

<sup>2</sup> Probate Code section 2620(c), as amended by Stats. 2008, ch. 293 (Assem. Bill 1340), § 9, effective Jan. 1, 2009.

1. All account filers may choose to use the standard account format (rule 7.575(b));
2. The standard account format must be used if:
  - a. The estate includes income real property;
  - b. The estate includes an interest in a trade or business;
  - c. The appraised value of the estate is \$500,000 or more, exclusive of the conservatee's or ward's residence;
  - d. The receipts or disbursements schedules prepared in the simplified format exceed five pages in length;<sup>3</sup> or
  - e. The court directs that a standard account must be filed. (Rule 7.575(b).)
3. The essential difference between a standard account and a simplified account is that in the former, the schedules for receipts and disbursements list the entries in subject-matter categories along with their subtotals, while schedules for simplified accounts list entries in chronological order without subtotals and without regard to the subject matter of each receipt or disbursement (rule 7.575(a)).
4. Judicial Council forms for a summary of account and the schedules supporting the summary for both standard and simplified accounts have been adopted (mandatory) or approved (optional).
  - a. Forms designated as GC-400(x) are standard account forms. Those designated as GC-405(x) are simplified account forms. Forms with both designations (GC-400(x)/GC-405(x)) are used in both formats (rule 7.575(d)).
  - b. The *Summary of Account—Standard and Simplified Accounts* (form GC-400(SUM)/GC-405(SUM)) must be used in all accounts. (See rule 7.575((e)(1)).)
  - c. Standard account filers may use their own supporting schedules instead of the Judicial Council forms for these schedules, but the information provided must be equivalent to the information requested in the forms (rule 7.575(e)(2)).

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<sup>3</sup> If an account must be prepared in the standard account format solely because of the length of one of these schedules, the account filer may choose to prepare only that schedule in the standard format.

- d. Simplified account filers must use the Judicial Council forms for supporting schedules (rule 7.575(e)(1)).

E. *Additional powers of the court*

1. In response to an investigator's report, the court may (a) order a (further) review or (b) order an accounting (Prob. Code, § 1850(a)(1));
2. On its own motion or on request by any interested person the court may order a review (including a court hearing) at any time and may also order an accounting (Prob. Code, § 1850(b)).
3. The court may subject an accounting to a random or discretionary full or partial review, which may include consideration of any information necessary to determine the accuracy of the accounting (Prob. Code, § 2620(d)).
4. On reasonable notice, the court may compel conservators and guardians to make available for inspection and copying, by any person designated by the court, all books and records, including receipts for any expenditures (Prob. Code, § 2620(e)).
5. The court has discretion to appoint counsel for the conservatee or ward under Probate Code section 1470 in connection with a conservator's or guardian's petition for settlement of an accounting if the court concludes that the conservatee or ward is not otherwise represented by counsel and the appointment would be helpful to the resolution of the matter or is necessary to protect the conservatee's or ward's interests (Prob. Code, § 1470).
  - a. Reasonable fees and expenses fixed by the court for appointed counsel in a conservatorship are to be paid by the estate of the conservatee (Prob. Code, § 1470(c)(1)).
  - b. The county, not the court, must pay for any portion of the reasonable fees and expenses of appointed counsel for a ward in a guardianship that the court determines that the minor's estate and the minor's parents are financially unable to pay (Prob. Code, § 1470(c)(3)).
  - c. Counsel for the conservatee or ward, including appointed counsel, may object to an accounting, thereby subjecting the accounting to fully contested litigation.

6. After January 1, 2008, the surety bonds of conservators and guardians must include a reasonable amount, fixed by rule of court, for the cost of recovery on the bond, including attorney fees and costs. (Prob. Code, § 2320(c)(4), Cal. Rules of Court, rule 7.207).
  - a. The cost of recovery on the bond includes fees and costs incurred in a successful action for surcharge against a conservator or guardian.
  - b. These fees and costs must be paid by the surety bond if the fiduciary does not pay them.
  - c. A surcharge against a conservator or guardian eligible for an award of attorney fees and costs under section 2320 may arise from successful objections to an accounting by appointed counsel for the conservatee or ward.

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Elizabethanne Miller Angevine Attorney Miller & Angevine Whittier	N	<p>*</p> <p>I am in complete agreement with Patricia Tobin’s comments on the Guidelines for Probate Examiners and Court Investigators. The verification of receipts as proposed in the guideline is a waste of estate funds. The better use of these funds is in training Conservators and streamlining the accounting process.</p> <p>I have 22 years of experience in this field of law and dealing with conservatorships. Most of us in this field know that the laws behind these guidelines are an over-response to a few bad cases and will be an unfunded mandate to the counties that they cannot actually comply with.</p>	<p>The guidelines are required by statute. Moreover, there is nothing in the guidelines that requires or suggests that all accounts would or should be subject to audit or other intensive verification of receipts or expenditures. The guidelines are also specifically made subject to courts’ staffing and budget requirements.</p>
2.	Dee Dee Blackwood Court Probate Investigator Superior Court of San Luis Obispo County Paso Robles	AM	<p>1). In reading the guidelines I have a concern that there is an assumption that we have resources to refer conservators to if we determine they need additional help or reinforcement of their duties and responsibilities.</p> <p>Investigators are between the proverbial rock and a hard place when conservators are pro per, or their counsel is not an expert in the conservatorship arena. Investigators</p>	<p>1). The committee is aware of the difficulties that courts and their investigators are experiencing since enactment of the Omnibus Conservatorship and Guardianship Reform Act in 2006 and the subsequent loss of funding for its implementation. The guidelines are expressly subject to courts’ resources and staffing levels.</p> <p>Investigators have a unique opportunity to have contact with the proposed conservator and, later, with the newly-appointed conservator. To the extent possible, this</p>

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			<p>must always be mindful that we are able to provide information, but cannot cross into the realm of legal advice.</p> <p>2). Please consider revising form GC-348, Section III CONSERVATOR OF THE ESTATE to include additional information found in California Rule of Court 7.1059.</p> <p>3). Please consider suggesting that investigators, during the initial interview with a proposed conservator, include a discussion of the content of the Duties of Conservator form (GC-348) and that such discussion be noted in the CI report. Such discussion is referenced on page 7, under item C, managing conservators. I think that reviewing the content of the Duties form pre-appointment reinforces the responsibilities and standards that the conservator will be expected to meet.</p> <p>4). A training program is needed for non-professional conservators that all courts can implement. Hopefully the Judicial Council will address this in the very near future.</p> <p>5). The <i>Handbook for Conservators</i> is a valuable resource. However, it was last</p>	<p>contact should be used to provide instruction and guidance to the fiduciary concerning the accounting process, particularly if it appears that the fiduciary is likely to have difficulties with that process.</p> <p>2). The committee agrees with this recommendation and will look at the form in light of the new rule of court.</p> <p>3). The committee agrees with this recommendation and has revised the guidelines accordingly.</p> <p>4). The committee concurs that there is a need for training of nonprofessional conservators and will look for ways to assist courts in providing it, perhaps with the assistance of professionals, as has been done in some courts.</p> <p>5). Budget concerns have delayed the publication of a third edition of the</p>

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			<p>updated in 2002. I would suggest that a revision is needed to address the comprehensive changes and new laws that have been implemented in the subsequent years.</p> <p>6). Please consider convening a workgroup of court investigators and probate examiners to develop a tool for reviewing accounts, identifying red flags, and making appropriate recommendations to the court based on the findings.</p>	<p><i>Handbook.</i></p> <p>6). This is an excellent recommendation. There is an effort under way to make the guidelines a focus of a discussion group at a probate institute or other CJER-sponsored educational program in the near future. Participants in that program would be a good source of members of a semi permanent workgroup to study and make recommendations concerning fiduciary accountings.</p>
3.	Victoria Ghaoui Court Investigator Superior Court of Marin County San Rafael	AM	<p>AOC must develop training for conservators.</p> <p>AOC must develop tools for reviewing accountings and identifying red flags.</p>	<p>The committee will consult with CJER and consider recommending the development of a training program for courts to offer to nonprofessional conservators or expansion and further distribution of course materials prepared by CJER in response to Probate Code section 1457.</p> <p>The committee views the proposed guidelines as the first tool to assist courts in their review of accountings. These guidelines will not be static. Their use is expected primarily to be in court staff training, and they will be continually modified and augmented as needed in the years ahead.</p>

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			<p>Add work group consisting of additional court investigators and examiners for appropriate input.</p> <p>Compliance hearings should be standard.</p>	<p>The committee strongly supports this recommendation, made by a number of commentators in response to this proposal.</p> <p>“Compliance hearings” are hearings scheduled in advance of statutory due dates for the filing of inventories and accountings in guardianships and conservatorships. Courts’ use of this scheduling device is authorized but not mandated in all cases by Probate Code section 1456.5, which offers courts two alternatives to secure compliance with these due dates. The second alternative is the establishment and maintenance of internal procedures that generate orders compelling delinquent fiduciaries to appear in court and consideration of sanctions for the delinquency. The committee supports greater use of compliance hearings to ensure timely filing of inventories and accountings if the second alternative permitted by section 1456.5 is not improving compliance with the filing deadlines.</p>
4.	Shauna Gillespie-Ford Court Investigator Superior Court of San Francisco County	AM	Page 3, Paragraph 2—“[E]xaminers and investigators attempt to identify conservators and guardians, particularly nonprofessionals, who might be expected to have difficulty with accountings as soon	



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			<p>as possible after their appointment.”</p> <p>This recommendation is impractical. In San Francisco, the examiners have nothing to do with conservators until one year after appointment when they review the first accounting. The investigator's interaction with the proposed conservator typically involves a telephone interview and little else that would allow a determination to be made as to whether the proposed conservator would have difficulty with accountings. Every individual seeking appointment as a conservator of estate is represented by an attorney and that attorney should guide the conservator through the accounting process. If for some reason, a proposed conservator displayed behavior that prompted concern in the opinion of the investigator, a recommendation for that person's appointment need not be made.</p> <p>Page 4, Paragraph 2—“Investigators and examiners will increasingly perform accounting audit functions in such cases by verifying receipts and disbursements shown in the accountings and confirming that expenditures ostensibly made for the benefit of the conservatee are actually applied for that purpose.”</p>	<p>The assumption in the guidelines is that investigators will interview proposed conservators at commencement of the case, at six months after appointment, and at one year after the appointment. Examiners should become aware of conservators who do not properly or timely prepare an Inventory and Appraisal, well before the first accounting is due. The guidelines recommend that the intelligence gathered by investigators and examiners in this way be shared so that problem fiduciaries may be identified as soon as possible, before the first accounting's due date. Most conservatorships suffer from a lack of qualified alternatives for appointment, so it may be expected that some appointments will be made even though concerns about accountings may be present.</p>

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			<p>This recommendation is impractical. Investigators are backlogged all over the state and it would be unrealistic for them to verify receipts and disbursements on top of everything else. Imagine the case of a conservatee who is placed in a care setting but owns property that is rented across town. The investigator is obligated to meet personally with the conservatee where he or she lives in the course of the review. To then go to the conservatee's property to verify that home repairs have been made could double or triple the time spent on that review.</p> <p>Page 5, Item A3—"If the accounting is late and therefore is not available at the time of the first annual review investigation, the court may justifiably conclude from that fact alone that a full annual review investigation should not be waived, at least until one or more accountings have been filed in time to be considered in a later review investigation."</p> <p>In San Francisco a date for the filing of the first accounting is given at the time that the conservator is appointed. If the accounting is not filed, an Order To Show Cause is issued. All conservatorships are reviewed after one year. No six month reviews are done due to budget constraints and as such, the first annual review is never waived.</p>	<p>The guidelines do not suggest or recommend that investigators should make more visits than those currently required, particularly visits merely to review property. But the guidelines do recommend that the investigator's eyes be open to possible irregularities during the visits that are made.</p> <p>It is hoped that efforts to bring problem fiduciaries up to speed on their accountings by informal early intervention will reduce the need to rely on OSCs and other more expensive and punitive methods of securing compliance with accounting requirements. This commentator's assertion that six-month reviews are not performed in her court is a</p>

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			<p>Page 6, Item I.c—"Examiners may: Communicate with the investigator who conducted the initial investigation in each new case involving a conservator with a flagged file as soon as possible, well before the first accounting is due in the case and, if possible, before the investigator schedules the first (six month) review investigation.</p> <p>This recommendation is impractical. San Francisco's examiners have nothing to do with the conservatorship until the time of the first accounting. Cases are randomly assigned to the investigators so the investigator who did the investigation prior to the conservator's appointment may not be the investigator who will do the review, one year after appointment. There are no funds to cover the cost for six month</p>	<p>common refrain across the state despite the mandatory requirement of the current law. Efforts are under way to change this law to make these reviews discretionary, at least in the current budget climate. However, the referenced statement in the guidelines does not refer to waiver of the first annual review; which is mandatory in all cases. The statement instead refers to waiver of a full review investigation and report after the first annual review under Probate Code section 1850(a)(2).</p> <p>See the above response concerning the six-month review investigation. The guidelines are recommendations that must be adjusted to each court's circumstances, staffing levels, and budget.</p>

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			<p>reviews in San Francisco.</p> <p>Page 6, Item 2.a.—“[P]reserve notes on this background information even if none of it is included in reports to the court, and be prepared to discuss relevant portions of it with the examiner who will review the first accounting.”</p> <p>This recommendation is impractical. With the number of conservatorship in San Francisco, how can the investigator keep notes on conservators much less discuss such issues with the examiner a year later? Keeping notes allows the investigator to be vulnerable to will contests and other matters in which they could be subpoenaed.</p> <p>Page 6, Item 2.b.—“[C]ommunicate with examiners about potential difficulties with accountings that they foresee.”</p> <p>Why would a Court Investigator recommend the appointment of someone who displays "potential difficulties?"</p>	<p>The guidelines recommend that investigators and examiners communicate with each other as frequently as possible. The guidelines have been amended to eliminate references to the keeping of notes (see response to comment of Jeanine Lim, below). However, if notes cannot be kept, investigators’ concerns about conservators’ potential problems with accountings must be included in their reports to the court.</p> <p>An investigator may be required by circumstances to recommend a person for appointment despite concerns about the person’s ability to handle the accounting function, particularly if the candidate is a family member who would otherwise be expected to care for the conservatee in an appropriate manner and there are no other</p>

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			<p>Why is there no mention of the attorney who represents the conservator or recognition that the investigator can always recommend that an attorney be appointed to represent the conservatee if it is warranted?</p> <p>Page 6, Item 2.c.—"Open an early dialogue with the appointed Probate Referee concerning the newly appointed conservator who is having difficulty with the inventory and appraisal."</p> <p>How would the Court Investigator know that a conservator is having difficulty with the I&amp;A? Where is the conservator's attorney in this process? The attorney should be preparing the I&amp;A and filing it. Where would the investigator find the Probate Referee? In my 28 years, I've never seen one in court or anywhere else</p>	<p>realistic alternatives.</p> <p>The guidelines do refer to the investigator's ability to recommend the appointment of counsel because of anticipated problems with accountings. (See item B2b(1) of the guidelines at page 4.) If the conservator's counsel is experienced and has a good reputation with the court that is known to the investigator, those facts would be factors in assessing whether the case requires special handling to avoid or reduce potential problems with accountings. The guidelines assume that some conservators of estates will represent themselves if they can do so without jeopardizing their ability to post a surety bond.</p> <p>The guidelines recommend that investigators and examiners learn which conservators are late with their inventories or who file poorly prepared inventories. If these fiduciaries are identified, communication with the probate referee appointed in the case may uncover important facts or may reveal circumstances that excuse tardiness and alleviate concerns.</p>

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			<p>but only their names stamped on the order.</p> <p>Page 7, 2.a.(1)—"Briefly review with the conservator his or her recordkeeping practices and recommend appropriate changes."</p> <p>Isn't this the responsibility of the attorney who represents the conservator?</p> <p>Page 7, 2.a.(4)—"Recommend to the conservator that he or she voluntarily participate in any training offered or sponsored by the court to nonprofessional conservators."</p> <p>This is not voluntary in San Francisco. All conservators must attend training classes for their service as conservator of the person, conservator of the estate or both. The Court gives the conservator several months to complete the classes after which they must file a Certificate of Completion.</p>	<p>All probate referees maintain offices and telephone numbers in the counties of their appointment that are known to the court.</p> <p>Yes, but if there are problems or if there is no attorney, the investigator can help the conservator meet his or her responsibilities. The attorney will ordinarily not be present when the investigator interviews the conservator as part of the review investigation process. These opportunities should not be wasted in cases where it is anticipated that the conservator may have difficulties with the accounting process.</p> <p>San Francisco's training program for nonprofessional conservators is well respected but unfortunately is not replicated throughout the state.</p>

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**Guidelines for Probate Examiners and Court Investigators to Assist Them in Reviewing Accountings of Conservators and Guardians and Detecting Fraud** (adopt and authorize distribution of guidelines)

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			<p>Page 7, 2.a.(5)—"Remind the conservator of the upcoming deadline for the first accounting and the importance of meeting that deadline and filing a complete accounting."</p> <p>Isn't this the responsibility of the attorney who represents the conservator? When the conservator is appointed, the Court gives the conservator and his/her attorney a date by which the accounting must be filed. An OSC will issue if the accounting is not filed by the date given.</p> <p>Page 7, b.—"Consider recommending to the court in appropriate cases that the court establish a firm date for the filing of the first accounting before the annual review date, subject to the sanctions of Probate Code section 2620.2 for failure to timely file the accounting."</p> <p>The Court in San Francisco sets all filing dates for accountings at the time a conservator is appointed.</p> <p>Page 8, 2.c.—"Investigators are encouraged to compare the last accounting's income and expenditures and assets on hand with the conservatee's current living situation at the time of the next review investigation even if the accounting is for a period ending before the</p>	<p>The attorney, if there is one, has this responsibility, but a direct reminder to the conservator by a representative of the court may carry greater urgency with the conservator than admonitions from his or her attorney and may serve to make the conservator understand that the obligation to prepare the accounting is the conservator's, not merely the obligation of the conservator's attorney.</p> <p>Many courts do not have this policy, although it is recommended and is one of the two scheduling alternatives authorized by Probate Code section 1456.5.</p>

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			<p>date of that review and even if the accounting was approved by the court..."</p> <p>This recommendation is impractical. With the backlog that many investigators have across the state, there is barely enough time to review the current accounting let alone one that was done two years prior and has already been considered and possibly approved by the Court.</p> <p>Page 10, 2.a.—“If an investigator sees something of concern during an investigation, whether or not there is a current accounting to review, he or she should consider, if time permits, reviewing earlier accountings and investigation reports to see if the problem actually was apparent at an earlier stage of the case.”</p> <p>While it is common place in San Francisco for the investigators to review prior Court Investigator's reports and consider every item under 2.b., time does not exist to review prior accountings routinely.</p> <p>Page 11, (5)—“If the accounting lists rehabilitation or improvement expenditures for the conservatee's real property, was the work actually done on that property,?”</p>	<p>The recommendation is to review the last accounting, even if it was filed and approved before the review investigation, not to review more than one accounting. The purpose of the comparison is not to detract from the court’s prior action on the accounting, but to give the investigator a basis on which to compare the allegations of the accounting with the facts on the ground, something the court cannot readily do when the accounting is approved.</p> <p>Prior review is recommended only if problems are seen during the investigation.</p>



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			<p>This recommendation is impractical. Real property improvements may not be identifiable to the investigator such as electrical work. Often a conservatee resides in a care facility while their property is rented or is being prepared for their return or for sale. The investigator may not be anywhere near the real property and the time to go to the property may double or triple the time needed to complete the review.</p> <p>Page 11, G. 1 &amp; 2—Both of these recommendations are impractical. Backlogs would give no time for reviewing a professional conservator's past accountings to compare their patterns in selecting placement, providers and other services. Similarly, there would be no time, resources or staff to randomly select and audit accountings.</p> <p>Page 12, 3-7- Items 3 and 4 have long been San Francisco's practice. Items 6 and 7 are impractical. There are insufficient resources, staff and time to undertake these random reviews. A review of original bank and investment company statements has long been among the practice for</p>	<p>This is understood. The guidelines ask only that investigators examine what they can see with knowledge of allegations in the accounting so they can spot possible inconsistencies. The guidelines do not expect that investigators will examine real property not occupied by the conservatee or other persons involved in the case that they do visit.</p> <p>All recommendations are limited by staffing and budget issues. Eventually, however, backlogs may be overcome. An analysis of accountings filed by professional conservators in more than one case is an important tool available to courts now and in the future to ensure that these professionals are doing their job properly. The random audit and its publicity to professional conservators are critical tools to ensure compliance with accounting requirements, accuracy in the accountings, and full disclosure by professional conservators.</p>

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			<p>accounting reviews.</p> <p>Page A-1, 2.a. &amp; 2.b.(2) - The lack of funding following the omnibus legislation has left San Francisco unable to undertake six month reviews and the status reports.</p> <p>There are many conscientious and thorough court investigators and examiners in our state. Such workers in San Francisco take our responsibilities very seriously and make every effort to provide the court with a clear picture of what is happening in every case. Many of your recommendations are practices that have existed for years in offices across the state, while others are unreachable because there is no staff, no money or no time to complete the recommendation. Other recommendations are totally impractical. Prior to adopting these recommendations, I suggest that you consult with examiners and investigators from across the state to get an understanding of general current practices and what new suggestions should be undertaken. This might avoid a repeat of the problems we encountered under the Omnibus Conservatorship and Guardianship Reform Act, which was enacted with little to no input from the actual people who do the work.</p>	<p>The committee agrees with this statement and has the highest respect for investigators. The committee has consulted with investigators in the development of these guidelines in response to the statutory directive and expects to have more consultations in the future. The committee anticipates that the guidelines will be expanded and revised in light of those further consultations.</p>

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5.	Edward E. Hawkins Law Office of Edward E. Hawkins Nevada City	N	<p>I would suggest that the detailed questioning proposed for accountings only occur where there is some indication of actual fraud. There are already enough burdens on conservators of modest estates.</p> <p>The detail required in accountings by this proposal will only further dissuade caregivers from establishing formal conservatorships. The seventeen pages of detail and guideline continues to focus on the small percentage of wrongdoers. Furthermore, there will be no funds to create such trainings, and additional court investigator assessments for these inquisitions will only impose additional burdens that modest estates cannot afford.</p> <p>A few bad apples in L.A. should not create financial hardships for conservators throughout the State of California. I already counsel my clients to avoid a conservatorship at all costs, but in those cases where conservatorship is the only alternative, depletion of much needed assets will occur much more quickly under these rules.</p> <p>The Medi-Cal program and the Public Guardian System will feel the brunt of these proposals. Please restrict them to cases where actual fraud is suspected.</p>	<p>The guidelines are required by statute. However, they do not require detailed questioning of all accountings. Their focus is to assist courts in determining as early as possible those conservatorships, and, to a lesser extent, guardianships, that may be expected to have difficulties with accountings, and to focus court review efforts to correct problems at the earliest point in time. Another main purpose is to coordinate the activities of court investigators in conservatorships with the accounting process so investigators can spot inconsistencies between disclosures in an accounting with the conservatee’s actual circumstances during the course of their required review investigations.</p> <p>The committee anticipates that the guidelines will enhance courts’ ability to detect possible fraud or other financial mismanagement without having to resort to much more expensive full audits by court-appointed experts. Moreover, the likelihood of closer scrutiny of problem accountings should serve as a deterrent to actual fraud in the preparation of all accounts. If the guidelines are successful in these intended purposes, the new tools provided to the courts by the 2006 and 2007 reform legislation to deal with fraud or mismanagement can be selectively applied. The guidelines are also subject to budget restraints.</p>

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6.	Sandy Hilton Probate Examiner Superior Court of San Francisco County San Francisco	N	<p>In the introduction, it is stated that “investigators and examiners will increasingly perform accounting audit functions”. This statement assumes this will occur without addressing how this additional responsibility will be accomplished given the already reduced workforce, the lack of funding for programs already mandated and the currently impacted work schedules of the investigators and examiners.</p> <p>With respect to B.1., a, b and c, identification of conservators who may not be able to properly perform their duties and flagging of those files:</p> <p>In our court, Examiners are generally not involved in the initial appointment of the conservator, nor do we track whether they have completed their training. If Examiners have to spend time trying to identify and then follow newly appointed conservators to determine whether they are going to have problems with accounting issues and/or filing the inventory, it’s going to create additional work at a time when we are already short-handed due to the budget cuts.</p> <p>With respect to G.1., special concerns in reviewing accountings of professional conservators:</p>	<p>The guidelines are mandated by statute and all recommendations contained in the document are made subject to courts’ staff and budget concerns.</p> <p>San Francisco has a mandatory training requirement, completion of which is evidenced by the filing of a completion certificate within a year of appointment. Examiners are better able to track completion of training in these circumstances than in most other courts. The guidelines don’t require extra effort to identify problem cases, merely attention to evidence indicating that some fiduciaries are likely to have or are already having difficulties.</p>

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			<p>While the recommendation states “if time, workload and available court resources permit”, investigators and examiners may consider reviewing and comparing current and past accountings of a professional conservator . . . By including this recommendation, the implication would be that the examiners and investigators should attempt to implement such a review as part of their regular duties. This recommendation would set a standard that is unattainable without additional funding.</p> <p>With respect to G.2., considering implementing a plan for random selection of accountings for audit:</p> <p>This recommendation does not address who would design and implement the plan. Currently, the examiners do not even have time to perform random audits, much less design and implement a program of random audits.</p> <p>The same comment applies to G.6., with respect to accountings of nonprofessional conservators and guardians.</p>	<p>This recommendation is directed only at professional conservators whose accountings raise questions. Review of accountings in other cases may reveal similar problems, such as possible undisclosed financial links to medical service providers, facilities, or caregivers, and other facts supporting greater scrutiny. Multi-case review is not recommended in all cases in the absence of factors supporting closer-than-usual scrutiny.</p> <p>Development of a plan for random audits of professional fiduciaries must involve judicial officers and senior probate department management. Investigators and examiners would implement the plan developed by more senior managers and judicial officers.</p>

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7.	Jeanine Lim Probate Court Investigator Superior Court of San Francisco County San Francisco	AM	<p>1. At Page 2: In reference to the investigator becoming “an auditor” of the accounting, please realize that quite often, the investigator visits the conservatee in a facility, such as a board and care home or a skilled nursing facility. We can verify that the conservatee has adequate clothing, a new television or radio, etc. However, if the conservatee owns real property, we do not make an extra trip to view the property. There may have been repairs or maintenance expenses incurred and which may be reflected in the accounting, but we would not be in a position to verify a new roof, new landscaping, repairs to the basement, etc.</p> <p>2. At Page 6: Court investigators do routinely ask questions about a proposed conservator’s experience and background. Relevant information is included in the initial investigation report.</p> <p>Court investigators <u>cannot</u> “preserve notes on this background information.” We do not as a practice keep our notes, due to space limitations, and secondary to the possibility of them being subject to future subpoenas in, for example, will contests.</p>	<p>1. The guidelines do not recommend or suggest that investigators should make extra trips in order to audit accountings. They do recommend that investigators become familiar with the accountings so they can spot inconsistencies between the allegations contained in the accountings and the conservatee’s actual circumstances when the investigators make currently required visits.</p> <p>The committee agrees with this comment and has removed the recommendation to preserve notes. However, this change means that investigators should be careful to include in their reports background information on (proposed) fiduciaries when it is possibly relevant to the investigator’s determination of whether the fiduciary is acting in the best interest of the conservatee, as that information would otherwise be lost if not preserved</p>

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			<p>3. At Page 7—Item #2(a)(1) to (5)—I believe that these tasks are the responsibility of the attorney who is representing the conservator.</p>	<p>outside the report.</p> <p>3. The committee agrees with this commentator that the conservator’s attorney should advise his or her client about the requirements for court accountings. But these recommendations apply to cases where the conservator has already been identified as needing more than the usual assistance to prepare and timely file a full and accurate accounting. The investigator’s interview with the conservator is a mandatory component of a review investigation. The interview gives the investigator an opportunity to emphasize the importance of the accounting function to the conservator and to assist him or her to understand what is required to prepare and timely file an accurate and complete accounting.</p>
8.	<p>Joint Rules Working Group Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee</p>	AM	<p>1. The working group had a concern about the guidelines and what is a court’s obligation to comply, and the consequence of not complying;</p> <p>2. The working group also felt the impact on the courts could range from significant to minimal dependent on the resources and practices currently in place in the individual courts. There are many different ways that these tasks are currently being accomplished. Many courts do not have</p>	<p>1. and 2. In response to these concerns, the committee revised the guidelines by adding the following paragraph at the top of page 2, the opening paragraph of the guidelines following an introduction:</p> <p><b>These guidelines are recommendations for best practices. They are not intended to represent or establish minimum standards of practice by courts or court staff for any purpose. The guidelines are subject to constraints imposed by each court’s</b></p>

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			<p>probate examiners and the duties outlined in the guidelines are either not being performed or are being performed by the court investigator, a clerk or other position;</p> <p>3. The working group suggested modifying the language to be “functionally based,” and not assigned to a specific “classification;” and</p> <p>4. A working group operational impact review on this proposal is available by contacting working group staff.</p>	<p><b>staffing, caseload, and funding.</b> (Bold text in original.)</p> <p>3. See response to the comments of Mary Beth Todd, a member of the Joint Rules Working Group, comment no. 15, below. The guidelines have been revised to advise that the tasks associated with examiners are recommended for the persons actually performing those tasks in each court, regardless of their job titles or descriptions or their status as employees or under contracts with courts.</p> <p>4. The committee believes that the statement quoted in response to paragraphs 1 and 2 above should satisfy the working group’s concerns about the possible impact of the guidelines on court operations.</p>
9.	Daniel McNamara Court Investigator Superior Court of Santa Barbara County Santa Maria	A	The only dilemma I find as a Court Investigator is the provision in the law that allows the conservator to submit an accounting up to fifteen days prior to the hearing date and the investigation review report having to be submitted no later than fifteen days prior to the hearing. It seems there has to be some way to address this so the Court Investigator has ample time to review and analyze the accounting as	The commentator may be referring to a Santa Barbara practice of setting a hearing date for an accounting before it is filed, which includes a proviso that the accounting must be filed no later than 15 days before that date if the hearing date is to be preserved. This practice, referred to by Marin County investigator Shauna McDonough (comment no. 13 below) as a “compliance hearing,” is permitted but not mandated by Probate Code



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			submitted to the court. Very rarely do I receive a timely accounting.	<p>section 1456.5.</p> <p>The law requires a minimum of 15 days’ notice of the hearing on an accounting, so that proper notice of hearing and a copy of the accounting can be mailed to the persons entitled to notice. However, there is no statutory requirement that a report on a review investigation must be filed 15 or more days before a hearing on an accounting or that a hearing must be scheduled on a review investigation report (except under Probate Code section 1850(b), for a court-ordered rather than a regularly-scheduled review investigation).</p> <p>If local practice in Santa Barbara requires a review report to be filed 15 days before a hearing on an accounting, perhaps that practice could be modified to accomplish greater coordination between accountings and review investigations (see Prob. Code, § 1851.2.)</p> <p>The commentator may be referring to Probate Code section 1851(b)(1), which requires the investigator’s report on a review investigation to be certified to the court not less than 15 days prior to the “date of review.” However, that date is not necessarily the date of the hearing on the accounting. It is not clear under the statute what is the date of review, although it may be the anniversary of the</p>

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				appointment date or the date of the previous review report A practical reading of section 1850(a)(2), which requires a review investigation one year after the appointment of a conservator and annually thereafter, would permit the investigation to <i>commence</i> no later than the anniversary date instead of requiring it to be completed and the report on the investigation certified to the court 15 days before that date, with the “date of review” fixed as a date at least 15 days after the investigator’s report is certified to the court. This interpretation would support some delay in completion of the investigation and report to permit consideration of an accounting filed at roughly the same time. This interpretation is supported by section 1851.2, which strongly encourages coordination of accountings and review investigations.
10.	Orange County Bar Association by Michael G. Yoder, President Newport Beach	A	No specific comment.	No response required.
11.	Martha Jo Patterson Attorney at Law L.A. Law Center, LLP Glendale	N	Pat Tobin is right on. The burden is too great. If you impose these burdens on families they will be forced to have the public guardian. My mother-in law is a Conservatee. She has only \$80,000. Under the current rules accounting for her expenses and receipts entering the monthly interest on the CDs, the payment to	As noted above, the guidelines are required by statute. See the response to the comment of Ms. Tobin below, comment no. 18.

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			<p>Prestige, the payments for medicine and doctors is a job that takes about 3 hours a week if you include writing the checks. I know that there is a receipt for every expense, but I am sure that some probate examiner could question the \$230.00 spent to buy her new clothes, which was necessary because we had to replace everything that opened in front because she was unzipping or unbuttoning all her tops. I am sure that expense would stand out.</p> <p>As it is the courts lack the staff they need, accounts are getting reviewed at the last minute, and if there is any question or problem, even something simple to clear up, most times the case is continued because we find out after 4 PM the day before the Court hearing. This is a very bad idea.</p>	
12.	Superior Court of Los Angeles County Los Angeles	A	No specific comment.	No response required.
13.	Superior Court of Marin County by Shauna McDonough Court Investigator San Rafael	AM	<p>1. The AOC has to develop training for conservators.</p> <p>2. Develop tools for reviewing accountings and identifying red flags.</p>	<p>1. The committee will consider making recommendations for assisting courts in providing training to nonprofessional conservators.</p> <p>2. The proposed guidelines may be viewed as the first tool developed for the stated</p>

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			<p>3. Compliance hearings should be standard.</p> <p>4. Establish a work group with additional court investigators and examiners for appropriate input.</p>	<p>purposes. The committee expects to modify and expand the guidelines over time, after further consultation with examiners and investigators.</p> <p>3. Probate Code section 1456.5 permits an alternative to a compliance hearing.</p> <p>4. This is an excellent suggestion. The first steps toward a permanent working group to discuss the guidelines may take place soon at a CJER probate institute or other educational program for investigators, staff attorneys, and examiners.</p>
14.	Superior Court of Riverside County Riverside	A	No specific comment	No response required.
15.	Superior Court of San Bernardino County Legal Research Department and Self-Help Program	A	In section E6 at page A-5 of Attachment A to the guidelines, addressing the increase in bond to include the cost of recovery, it would be helpful to include two additional points. First, the text should make clear that CRC Rule 7.207 provides the calculation of the amount that is deemed a	The committee believes that these recommended changes are unnecessary. First, rule 7.207 expressly provides the calculation to establish the amount of additional bond to cover the cost of recovery on the bond, and Probate Code section 2320(c)(4) indicates that a rule of court is to be the means by which the

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			reasonable amount of cost of recovery to be added to the required bond. Second, text should be included in a new subsection d advising examiners that the additional bond is required not only in new conservatorship cases but also in ongoing cases and that when considering accountings, examiners should consider/recalculate whether the bond should be increased to include the cost of recovery required by Probate Code section 2320(c)(4).	additional amount is to be determined. Second, rule 7.207(b) expressly requires fiduciaries appointed before the effective date of the rule to apply to the court for authority to increase the bond by the additional amount required by the rule for payment of the cost of recovery on the bond. The committee does not believe that examiners are in any doubt about their responsibility to question the sufficiency of a fiduciary’s bond under section 2320 and rule 7.207.
16.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer San Diego	A	No additional comments.	No response required.
17.	Superior Court of Tulare County by Mary Beth Hash, Deputy Director Family Court and Special Services Visalia	AM	* We are in agreement with the proposed changes with the following modifications. These comments address the areas related to investigators:  There is a need to address the time discrepancies of the Probate Code pertaining to the review investigations (Prob. Code, § 1851) and the accountings (Prob. Code, § 2620). If we delay a review investigation to wait for an accounting, we are out of compliance with the code.	The committee agrees that coordination of review investigations and accountings is important, but the deadlines for both events are statutory. There is some latitude, supported by Probate Code section 1851.2 that provides that courts must coordinate investigations with the filing of accountings <i>if</i>

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			<p>Accountings often are received more than 60 days after the due date of the investigation.</p> <p>Waivers of accountings should be restricted until after at least the First Account is appropriately completed and approved by the court.</p> <p>Clarification of the code related to waivers of accountings—Can waivers be granted and exists until the termination of the conservatorship? Or, do waivers need to be addressed by the investigators during a review every two years and brought to the courts attention?</p>	<p><i>feasible</i>, but likely not the 60-day period referred to by the commentator. (See the response to the comment of Daniel McNamara, comment no. 9 above.) Closer coordination would require statutory changes. The committee believes the best way to ensure the greatest amount of coordination between accountings and review investigations is to more stringently enforce the deadlines for the accountings.</p> <p>The proposed guidelines do not address waivers of accountings, and there is no general statutory authority for a waiver of accounting in a conservatorship or guardianship similar to Probate Code section 10954, which applies to decedents’ estates. A conservatee lacks capacity to waive an accounting, and only a ward who has reached his or her majority may do so, subject to the guardian’s continued obligation to receive a discharge from the court (Prob. Code, § 2627). The court may dispense with an accounting only in the limited circumstances described in Probate Code section 2628—small estates with low annual income above public benefits and all income retained or spent for the conservatee or ward. If this comment is directed at waivers by the court under section 2628, the committee notes that the waiver may be withdrawn by the court at any time, on its own motion or on the petition of the conservatee or ward or an interested</p>

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			<p>Training for investigators should be addressed relating to reviewing financial documents and record keeping.</p> <p>The <i>Conservatorship Handbook</i> that is referred to with the document is far too outdated (2002) for use by a conservator of estate for assistance in completing an accounting. The current edition does not include many substantial law changes and rules of court or the new mandated forms.</p> <p>Clarification for the investigators as to whether there is a difference in how a “status” review is investigated in comparison to a “full” review. Per PrC1850 &amp; 1851, investigation details for initial petitions, 6 month, 12 month, status, and biennial reviews all are identical and identified within Sec. 1851. Attachment A, A 2(b)(3) states that a “full” review requires a more extensive full report than the status report. The only difference between the status and full report per the code is that the involved parties and conservatee receive a copy of the report</p>	<p>person. Moreover, the waiver terminates automatically, and the duty to account is restored, if the estate’s income and assets exceed the maximums provided in the statute during any accounting period.</p> <p>This recommendation will be passed on to the committee’s CJER staff for development through the Probate and Mental Health Education Committee.</p> <p>Revision of the <i>Handbook for Conservators</i> has been delayed indefinitely because of the current budget situation.</p> <p>The committee agrees that the scope of the “full” and “status” review investigations is identical. But the report on the “status” investigation addresses only the questions of whether the conservatorship is still warranted and whether the conservator is acting in the best interest of the conservatee. The other findings described in section 1851(a) and their supporting facts need not be included in the status report. A favorable status report does not require a hearing and no further court action is necessary.</p>

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			<p>and a proof of service is required.</p> <p>If any additional information is needed or there are questions related to these comments, please do not hesitate to contact me using the information below.</p> <p>Thank you for considering this feedback.</p>	
18.	<p>Patricia Tobin Law Office of Patricia Tobin San Rafael</p>	N	<p>The seventeen pages of detail and guideline continues to focus on the small percentage of wrongdoers or misguided, family conservators.</p> <p>Training busy family conservators to be better accountants is not a sound approach and unnecessarily burdens family members who tend to be already overwhelmed by this economy, raising their own family and elder care responsibilities.</p> <p>Further, in the foreseeable future, there will be no funds to create such trainings.</p> <p>We should allow simple accountings consisting of photocopies of bank statements and check registers and online printouts and ONLY if that raises concerns,</p>	<p>The committee believes that recommendations for a simplified or streamlined accounting procedure in conservatorships and guardianships are wise.</p>



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			<p>then a formal accounting might be required</p> <p>We should allow Quicken and computerized accountings and again— ONLY if that raises a concern, then a formal accounting might be required</p> <p>Great loving caregivers are punished under our system for being imperfect bookkeepers. We should support, value and assist family caregivers, not demand formal investigations.</p> <p>For the foreseeable future, Social Services will continue to be diminished, while the caregivers’ duties increase. In this time of government cuts, the court system should <b>simplify</b> instead of making this more demanding and more detailed.</p> <p>The court system should respond to the economic realities and take bold steps to create a system that distinguishes “life-affecting” misdeeds of conservators from trivial failures to keep a receipt or buy something the court staff does not value.</p>	<p>It will consider recommending statutory authority for such a procedure for the smaller estate.</p> <p>A conservator or guardian submitting a standard accounting is currently eligible to prepare his or her own schedules instead of using the Judicial Council accounting forms (other than the <i>Summary of Account</i> (form GC-400(SUM)/GC-405(SUM)), which contains the totals from all the schedules and must be used in all accountings). See rule 7.575(e).</p> <p>Nothing in the guidelines suggests or implies that investigators, examiners, or judicial officers may not disregard trivial errors in the preparation of accountings.</p>

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			<p>In this era of government cuts we must reject the knee jerk reaction to every Los Angeles Times exposé and recognize that the system cannot afford the Court staff and judicial time to ferret out trivial errors and instead encourage the exercise of sound and compassionate judgment of when to pursue a concern and when to ignore trivial errors.</p> <p>We MUST revise a court system that gives no tangible or professional reward to any court staff for providing help and support to a non-professional conservator, but instead the system trains, encourages and rewards staff for a “GOTCHA” mindset for catching meaningless detail and questioning family customs and values.</p> <p>Nothing is built into the system to reward a court investigator or probate examiner for helping a family give better care—but as these 17 pages of proposed anti-fraud guidelines demonstrate, instead staff are routinely trained to scrutinize and question and suspect the decisions of a well meaning but casual bookkeeper.</p> <p>As an example--- is the following the court service that the taxpayers want to pay for?</p>	<p>The guidelines include recommendations that investigators provide extra instruction and guidance to nonprofessional conservators who are having difficulty with the accounting requirements.</p> <p>The investigator may report on the appropriateness of the conservatorship and whether the conservator is acting in the best interest of the conservatee regarding placement and quality of care as well as finances. There is an opportunity for the investigator to advise the court about exceptional and effective personal care given the conservatee by the conservator and the caregivers he or she manages, whether or not there are minor errors in the accounting that do not materially affect the conservatee’s</p>

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			<p>A very low income family of a totally bedridden patient with a modest estate kept her at home for over 15 years WITHOUT A BEDSORE. (Anyone who has done such home care would understand why this is an amazing accomplishment) They NEVER took a penny of fees.</p> <p>Was there one word of recognition of this dedication—NO! Instead, the examiner questions a parking ticket paid by the estate. Even if the driver forgot to put up a handicap placard or overstayed a meter, why is this error worth anyone’s time? In the context of the entire case is there any real concern that this is a clue warranting an investigation for financial abuse?</p> <p>I urge the court system to reconsider these guidelines. Thank you for your consideration</p>	<p>finances or quality of life.</p> <p>There is nothing in the guidelines that would require an examiner to question a minor parking ticket expenditure that he or she would not question before adoption and implementation of the guidelines. One of the things the guidelines should do is make it easier for examiners and investigators to distinguish between minor inadvertent accounting errors and intentional fraud.</p>
19.	Mary Beth Todd Court Executive Officer Superior Court of Calaveras County San Andreas	AM	<p>Many courts do not have probate examiner positions.</p> <p>Recommend the guidelines be more broadly written to provide recommended tasks, strategies and checks and balances while refraining from designating tasks to</p>	<p>The guidelines are intended to apply to all court employees or contracting parties who perform the functions of probate examiners or staff attorneys responsible for probate</p>



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				<p><b>subject to constraints imposed by each court's staffing, caseload, and funding.</b> (Bold in original.)</p> <p>Court investigators are required by statute (Prob. Code, § 1454). Examiners are not. The duties of examiners in smaller courts are often performed by court clerks or by court investigators or, in courts in the least populous counties, are not regularly performed at all because there are not enough probate matters in those courts to require probate calendar clearing on a regular or systematic basis. The guidelines are not intended to change that reality.</p>
20.	Helen Yune Trowbridge Probate Examiner Superior Court of San Francisco County San Francisco	AM	<p>I understand that "guideline" and "recommendation" mean that these are not mandatory; however, many of these guidelines and recommendations seem superfluous, as they are already LAW. If the Probate Code were followed, as our court has done in my nearly 15 years' experience both outside and inside the court, such guidelines would be unnecessary. Perhaps the last paragraph on page 4 of SPR09-44 could be at the very top of the document and in bold face.</p> <p>My primary concern with this proposal is</p>	<p>The referenced paragraph—a statement that the guidelines are subject to constraints imposed by each court's staffing, caseload, and funding—is now at the top of page 2 of the guidelines and is in bold.</p> <p>The recommendations in the guidelines are</p>

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			<p>the recommendation that examiners and investigators attempt to identify fiduciaries, “who might be expected to have difficulty with accountings” and somehow act on that.</p> <p>Our court does not permit non-professional fiduciaries to represent themselves; we believe it is the responsibility of the attorney representing a fiduciary to make sure his/her client complies with all applicable laws and local rules. In fact, LRSF 14.89M and 14.90Q prohibit an attorney for a guardian and a conservator from withdrawing without a formal, noticed hearing, and the latter rule explicitly prohibits a non-attorney from acting in pro per as a conservator. All of our professional fiduciaries are represented by counsel. If a fiduciary is non-compliant, the court can surcharge the attorney, if necessary. To facilitate</p>	<p>prophylactic. If a proposed or newly appointed conservator or guardian appears to court staff to be or to become likely to experience difficulties with the preparation and timely filing of accountings, additional steps are recommended to address these difficulties, with the goal of their early elimination. But if the court in San Francisco concludes that counsel for conservators can ensure their clients’ compliance with all requirements for fiduciary accountings, with the assistance of the court’s date-setting procedures, the guidelines’ recommendations for additional steps to ensure compliance with accounting requirements will not be necessary.</p> <p>The committee interprets the local San Francisco court rules differently than does this commentator. The local rules she cites, rules 14.89M and 14.90Q, applicable respectively to guardianships and conservatorships, require a noticed motion and leave of court rather than a Substitution of Attorney form that is effective merely on filing to substitute a nonlawyer fiduciary for a withdrawing attorney. Although the rules discourage self-representation by guardians and conservators, particularly guardians and conservators of estates, they do not prohibit self-representation by these fiduciaries. The rules are sound because many sureties routinely require guardians and conservators</p>

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			<p>tracking compliance, our court has an attachment to the order appointing a conservator or guardian, on which status dates are set for, among other things, filing the General Plan, Status Report, Inventory, and first accounting, etc.</p> <p>Similarly, it seems onerous to suggest that the investigator maintain an open dialogue with the Probate Referee in connection with a newly-appointed conservator who is having difficulty with the I&amp;A. That, too, is the responsibility of the conservator's attorney. The court should not come between an attorney and his/her client.</p> <p>It should be noted that, in San Francisco, examiners and investigators already have been doing the things recommended here, which, aside from being statutorily required, are common sense. In particular, we coordinate reviews of accountings, so that, if an investigator finds any irregularity, he/she makes it known to the examiner, and if an examiner has issues with questionable expenditures that are not</p>	<p>of estates to be represented by counsel to qualify for a bond. The court must ensure that the fiduciary will not become disqualified for a bond before granting an attorney's motion to withdraw.</p> <p>The referee may be able to explain some of the problems the conservator is having with the inventory, particularly if it is held up because of the need to wait for confirmation of certain facts necessary for the referee to complete the appraisal. The referee may also be able to advise the investigator that the conservator had considerable difficulty preparing an inventory that the referee could use for the appraisal. As noted elsewhere, the guidelines do not assume that every conservator of an estate will be represented by counsel.</p> <p>The committee is pleased to learn that the court in San Francisco has had success in following many of the recommendations contained in the guidelines.</p>

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			<p>adequately addressed by the conservator/guardian (or attorney), he/she consults the investigator. As our staff has dwindled with retiring colleagues, and those positions will not be filled in the foreseeable future, our ability to maintain our high standards will be a greater risk, but we at least have the procedures in place already to make our reviews thorough and meaningful.</p> <p>Thank you for your consideration.</p>	
21.	Trusts and Estates Section, State Bar of California (Texcom) by Neil F. Horton, Vice Chair Sacramento	AM	<p>1. Page 5, Paragraph 3, insert “unreasonably” before “late.”</p> <p>2. TexCom believes that language needs to be inserted into the Guidelines to address and reflect the concerns articulated below.</p> <p>While TexCom believes the underlying</p>	<p>1. The committee believes that this recommended change is unnecessary. The guideline says merely that the court may (not must) consider a late accounting a sufficient ground not to waive an annual review investigation at the end of the year following the previous full review investigation. This is a discretionary standard that implies authority to waive the annual review despite the fiduciary’s failure to meet the deadline if that failure is minor or inconsequential and the conduct of the fiduciary is otherwise reassuring.</p> <p>2. The committee’s experience with investigators and examiners during the development of these guidelines leads the committee to believe that these professionals will understand the guidelines to be</p>



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			<p>concept of providing Guidelines to Probate Examiners (“PE’s”) and Court Investigators (“CI’s”) is a sound idea. TexCom has a concern that notwithstanding the intent behind the Guidelines, there is an overriding concern that some PE’s and CI’s will implement these as “rules” rather than “Guidelines”, and not consider the facts and or circumstances unique to each particular case.</p> <p>The ultimate issue in a conservatorship is the proper care and maintenance of the conservatee and his or her finances. The role of the conservator is burdensome, and these “guidelines” as written do not take into consideration the burdens associated with serving as a conservator. The guidelines, in fact, appear to be punitive in nature. A clear message needs to be articulated to PE’s and CI’s that the Guidelines need to be applied reasonably and done so on a case by case basis.</p>	<p>suggestions and recommendations to be applied in appropriate circumstances and not inflexible rules that must be applied in all situations. This understanding is enhanced by the following statement at the top of page 2 of the guidelines:</p> <p><b>These guidelines are recommendations for best practices. They are not intended to represent or establish minimum standards of practice by courts or court staff for any purpose.</b> (Bold text in original.)</p> <p>The committee believes that court investigators and probate examiners will readily understand that the guidelines are to be applied reasonably.</p>
22.	Trudy Verzosa Probate Examiner San Francisco Superior Court San Francisco	AM	B.1.a. How are examiners to know whether fiduciaries have attended their classes or whether they understood the training? All non-professional conservators must be represented by counsel and this is their responsibility.	See the response to the comments of Helen Yune Trowbridge, comment no. 20 above. If the court has required classes, there must be a way to keep track of the attendees. The committee understands that conservators in San Francisco must file completion

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			<p>B.1.b. Again how are examiners to know whether fiduciaries show difficulty in preparing the I&amp;A? This is the attorney's responsibility.</p> <p>B.1.c. There is barely enough time to review accounts as they come due—how are we supposed to conduct a conference about each potential problem before the first account is even due? Again—this burden should be placed squarely on the shoulders of the attorney.</p> <p>B.2.c. Why should the investigator get involved in the probate referee's job?</p> <p>C.2. All of these are things for which the attorney for the conservator is responsible. Why should the investigators have to hold the hand of the fiduciary and/or his/her attorney? The Handbook is clear and thorough and the fiduciary must sign a declaration that they have received the</p>	<p>certificates.</p> <p>The guidelines are prepared on the assumption that some estate guardians and conservators will not be represented by counsel. Whether or not there is an attorney of record for the fiduciary, an incomplete, poorly prepared inventory filed late will indicate that the fiduciary is having difficulties suggesting that he or she will eventually have problems preparing an accounting.</p> <p>This recommendation is based on the concept that an investigator who has had contact with a conservator that revealed facts indicating that accountings may be a problem should communicate his or her concerns to the examiner.</p> <p>The committee, whose membership includes probate referees, examiners, and investigators, views the referee as a potential resource for the investigator.</p> <p>The investigator has mandated contact with the conservator, during which time valuable information about the accounting process may be transmitted to the fiduciary. It is desirable to head off as many accounting problems as possible before OSCs or other formal court actions are required.</p>

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			<p>Handbook and understand their duties. Training is mandatory, at least in SF. The deadline for the first account is set at appointment and it is conservator's duty to keep track of the date. If they do not file on time, an OSC is issued.</p> <p>G.1. It is not feasible to compare accounts from one professional conservator across all of their open cases. This would require a substantial amount of manpower to determine the open cases by that fiduciary (probably in the hundreds for some in SF), having the court clerks pull all the files, and then actually reviewing those accounts. The courts are already under-staffed and can barely keep up with the current accounts.</p> <p>G.2. Great - who's paying?</p> <p>G.4. How is the court to know whether a fiduciary has pending accounts in a neighboring county?</p>	<p>Conflict problems and other irregularities of professional conservators are usually present in more than one case. Common issues presented in a professional's cases will be revealed only upon a systematic review of them.</p> <p>The audits will have to be done in estates that can afford the extra scrutiny. The most important effect of the audits is that they are uncertain and that the conservators know that their accounts are always subject to this scrutiny. This knowledge has power only if some audits are in fact conducted.</p> <p>Inquiry may be made of the professional, the Professional Fiduciaries Bureau, and court staff in the neighboring county.</p> <p>Exactly. That is the purpose of flagging the</p>

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			G.6. All accounts get the appropriate level of scrutiny - if a red flag is raised in an accounting, the examiner will ask for more support—receipts, statements, etc.	problem files, to identify the cases and fiduciaries needing special handling.
23.	Cynthia Webb-Beckford Court Investigator Superior Court of San Francisco County San Francisco	N	<p>As a Court Investigator for the City and County of San Francisco I have a few general comments on the proposed legislation.</p> <p>1. There should always be a coordinated annual review of conservatorships and guardianships of the estate. I have found that problems with estate matters will show up as early as the I &amp; A and general plan and most definitely in the first account. So I think the idea of flagging is unnecessary as you already know it's going to be bad.</p> <p>2. The purpose of the Court Investigator is not to manage the conservator or guardian and the duties of a CI are specially addressed in sections 1513, 1850 &amp; 1851. We simply do not have the time to devote to the conservator or guardians when we are suppose to be looking after the best interests of the conservatee/ward. I think</p>	<p>1. Flagging is recommended so that a particular investigator's or examiner's knowledge of a problem file becomes institutional knowledge.</p> <p>2. The primary role of the investigator has not been changed. However, the guidelines are intended to focus the investigator on issues presented in the conservator's accounting that he or she can verify in the course of the investigator's personal contact and observation of the conservatee and the</p>

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			<p>this would be a potential conflict of interest. Furthermore, legal counsel for the conservator/guardian should be providing direction and management for their client. If the conservator/guardian is unrepresented the CI can give them general guidance as well as refer them to a local self help center or to local pro bono agencies. The CI cannot become enmeshed in all the inertia conservators/guardians can cause and must remain not only independent but objective.</p>	<p>conservatee’s immediate surroundings. Advice to the conservator on how to prepare an accounting is not a conflict of interest, as the conservatee benefits from a properly prepared and timely accounting. If counsel for the conservator is providing this guidance and it is in fact followed, there is certainly no need for the investigator to provide it.</p>
24.	<p>Pamela J. Williams Court Investigator Superior Court of Marin County</p>	<p>AM, N</p>	<p>I have reviewed the proposed guidelines and want to share my comments and concerns about this proposal. You have organized the guidelines into areas of emphasis and I will attempt to respond to each area.</p> <p>I want to preface my comments on the recommendation with some concerns about the guidelines in general. The guidelines recommend a broader role for court investigators in educating and monitoring conservators. Specifically, in Section B.2. and Section C.2.a it is recommended that court investigators take on duties that I believe belong with the attorney representing the conservator or guardian. This could easily place us in a position of conflict of interest if we are both advising</p>	<p>The committee does not believe that an investigator’s instructions to a conservator on the preparation of a proper, timely, and complete accounting demonstrates a conflict of interest.</p>

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			<p>and supervising the fiduciary.</p> <p>The guidelines seem to assume that courts sponsor training programs for conservators and that the <i>Handbook for Conservators</i> is a resource we can rely on to advise conservators. These are important resources and we would all benefit from the Judicial Council developing the training and updating the <i>Handbook for Conservators</i>.</p> <p>The guidelines indicate they are also for guardianship accountings but none of the recommendations address the specific requirements in a guardianship of the estate. There are fundamental differences in the duty of a conservator and guardian as it relates to management of the assets and use of estate funds. The guidelines should be modified to address this.</p> <p>I disagree with some of the premises in the guidelines. The guidelines say at page 2 that the “recommendations reflect a fundamental difference between the roles of two court staff positions in connection with a fiduciary’s accounting.” You indicate the examiner’s role is to review the accounting in connection with its settlement and the court investigator “can become, in effect, an auditor of the</p>	<p>The committee understands that some, but not all, courts provide training to nonprofessional conservators, and will explore ways to expand and assist in the development of such training. Updating the <i>Handbook</i> is a goal currently delayed because of budget concerns.</p> <p>The role of court investigators in guardianships is limited to initial investigations in cases where the proposed guardian is related to the child, and there are no mandatory review investigations. Therefore, guidelines that emphasis the role of investigators in connection with accountings, well after appointment of a fiduciary, necessarily must focus on conservatorships.</p> <p>Investigators’ primary role after appointment of a fiduciary is to conduct review investigations that are not directly tied in with accountings, and often occur without regard to any particular accounting. But that role places the investigator in a good position to observe facts on the ground that the examiner never sees: the actual circumstances of the conservatee in his or her living situation, and contact with family members and others with</p>

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			<p>accounting.” In my view, the examiner’s expertise is in the notice and legal requirements, the quantitative review, not only in conservatorships but in all the other probate proceedings on the calendar. I believe court investigators should do a substantive and qualitative review of the accounting and that we are the experts in conservatorships. But court investigators need adequate time and training to perform this function.</p> <p>We anticipated the guidelines would provide a tool to help us review the accountings. I recommend the committee develop a workgroup comprised of investigators and probate examiners to assist you in revising these guidelines.</p> <p><b><i>A. Coordination of accountings and review investigations in conservatorships</i></b></p> <p><b>Agree with proposed changes</b></p> <p>Comment: Court Investigators can play an important role in detecting problems that may be overlooked by an examiner who has not visited the conservatee where he or she lives. No report, no matter how thorough or complete, can address every question that could be raised in an accounting. The only way investigators, examiners and judicial officers can</p>	<p>additional knowledge about the situation. The committee hopes the guidelines will help investigators become familiar with accountings and what they do and do not show.</p> <p>The committee believes formation of a working group of examiners and investigators is an excellent idea, and will pursue this suggestion.</p> <p>No response required.</p>

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			<p>function as a team, bringing all of our expertise to bear, is when we coordinate our review of cases.</p> <p>The best mechanism to coordinate our work is for the court to set compliance hearings as specified in Probate Code §1456.5 (a). If the accounting is delayed the court investigator should have discretion to do the review investigation at that time or wait until the accounting is filed.</p> <p><b>B. Accountings and nonprofessional conservators and guardians</b></p> <p><b>Disagree with proposed changes</b></p> <p>Comment: In my experience the best indicator of problems with the first accounting is failure to timely file a complete Inventory and Appraisal. If we don't have a proper beginning balance for the accounting, the review of the accounting will be a difficult and each amendment to the accounting creates its own challenges. The best way to avoid problems with first accountings is to calendar a compliance date for the I&amp;A.</p> <p>In addition the investigator and examiner should review the I&amp;A and match it with the information in the petition and court</p>	<p>The committee agrees with this recommendation, and will undertake to advise courts that do not follow this practice to consider its use. However, a substantial delay in a review investigation would run afoul of the requirements of section 1850.</p> <p>The guidelines do not preclude establishment of a compliance date for the Inventory and Appraisal. The guidelines emphasize that difficulties with preparation and timely filing of a complete inventory is a good indicator of later problems with accountings.</p> <p>This is a good recommendation that the committee will consider adding to the guidelines at a later time.</p>



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			<p>investigator’s report. The review should also make sure the fiduciary’s bond is sufficient and that the probate referee has appraised the estate as required by law.</p> <p>In my experience there is little relationship between the size and complexity of the estate and problems that the court investigator can identify. Some small estates present challenges because of limited resources. For example, if the conservator and conservatee live together and share household expenses and conservator is the care provider, the court investigator should identify potential problems, obtain additional information and include recommendations in the report. There is likewise a limited relationship between the conservator’s education, experience and background and ability to keep records. It is the more sophisticated and educated who are most often guilty of fraud and abuse. After 20 years of experience as an investigator I can’t say how to fairly “flag” a case. Experienced investigators are very skilled at identifying which cases are going to be problems. We can make recommendations but they have little effect if the judicial officer doesn’t order the conservator or guardian to comply.</p> <p>Court Investigators are required to</p>	<p>That experience may be the best indicator of which cases to flag.</p> <p>The committee will note this recommendation and consider adding it to the guidelines at a</p>

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			<p>interview proposed conservators at the initial investigation. It would be helpful if the guidelines helped us identify questions we should include as part of the interview with the conservator.</p> <p>In addition few courts have established training programs for new conservators. The Judicial Council was required to develop and disseminate a program over a year ago so many of us are waiting for this resource.</p> <p><b><i>C. Managing conservators and guardians whose files have been flagged</i></b></p> <p><b>Disagree with proposed changes</b></p> <p>Comments: I have shared my concern about “flagging” cases and my view that the court should calendar a compliance date for filing the Inventory and Appraisal and the first account.</p> <p>I am concerned about the recommendation that court investigators review a conservator’s record keeping practices, fiduciary responsibilities, and rule 7.1059(b) of the California Rules of Court with a conservator. I believe this is the role of the attorney for the conservator or guardian. As part of my interview with the</p>	<p>later time, perhaps through the proposed working group.</p> <p>CJER has developed program materials in response to the statutory directive. The committee will see that this commentator and her court receive the material.</p> <p>If more courts implement compliance dates for the inventory and the accountings, and this step reduces problems with these documents, the need to flag conservators likely to have these problems will diminish.</p> <p>The guidelines do not assume that all conservators will be represented by counsel. Moreover, the contact between the conservator and the investigator during the review investigation, usually outside the presence of counsel, gives the investigator an opportunity to assist the conservator directly.</p>

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			<p>proposed conservator I ask if they have the <i>Handbook for Conservators</i> and a copy of their <i>Duties of Conservator</i>. I encourage them to consult it and speak with their attorney if a question comes up.</p> <p>I also am concerned that a standardized training program has not been developed and the <i>Handbook for Conservators</i> has not been updated.</p> <p>In the past the General Plan, required by Probate Code §1831 (repealed in 1993), was an invaluable tool to assess the conservator’s abilities when reviewed along with the Inventory and Appraisal. Many of the attorneys I worked met with their client several months into the conservatorship to review the I&amp;A, develop the General Plan, and review the conservatorship checking account. This allowed them to identify problems early on and take corrective action.</p> <p><b><i>D. If an accounting and a conservator review investigation are not coordinated, and if time, workload and resources permit (examiners should review the court investigator report and investigators should review the last accounting).</i></b></p> <p><b>Agree with proposed changes</b></p> <p>Comment: There is no substitute for</p>	<p>The committee will update the <i>Handbook</i> as soon as budget conditions permit.</p> <p>Legislation to restore the General Plan was unsuccessful in 2007 and 2008 because of the state’s financial situation. A mandatory General Plan is a recommendation of the Probate Conservatorship Task Force that is supported by the Judicial Council, but must await a better fiscal environment. Some of the substance of a general plan does now exist, however, under Probate Code section 2352.5, added in 2006 and amended in 2007. The committee will consider whether this new provision needs greater emphasis and amplification.</p> <p>No response required.</p>

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			<p>coordinating the accounting and the review so this recommendation should be a minimum standard of practice.</p> <p><b><i>E. What to look for in a conservatorship or guardianship accounting</i></b></p> <p><b>Disagree with proposed changes</b></p> <p>Comment: I believe we should develop a tool to systematically review all fiduciary accountings. The examples listed under this recommendation are incomplete and miss the big picture. Court Investigators should look at the macro issues, including the rate of depletion of the estate and overall estate management. We should question whether all assets are being used for the benefit of the conservatee and identify discretionary spending. We should review whether the expenses are consistent with conservatee’s needs and circumstances. I believe we should develop some guidelines that identify areas ripe for fraud and abuse. They include real property not rented or sold and medical expenses. Court Investigators should be aware of the conservatee’s health insurance benefits and what are reasonable medical expenses given the conservatee’s circumstances. For</p>	<p>The committee agrees with this statement and the recommendations that follow. The committee will consider appropriate revisions of the guidelines at a future time to include them.</p>

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			<p>example,</p> <ol style="list-style-type: none"> <li>1. Have medical expenses been billed to insurance?</li> <li>2. Are any reimbursements reported?</li> <li>3. If the expenses are high and limited reimbursements are reported, the CI should consider the possibility that the conservator is not billing insurance, is pocketing reimbursements or is using the estate to pay their own medical expenses.</li> <li>4. If real property is not rented or sold within the first year, the court investigator should drive by or ask to see the inside of the house. The investigator should consider the possibility that the conservator is pocketing rent or allowing someone to live there rent free.</li> </ol> <p><b>F. Coordination of the work of investigators and examiners</b></p> <p><b>Disagree with proposed changes</b></p> <p>Comment: I have shared my view that court investigators should perform a</p>	<p>The guidelines do not suggest that investigators should not include in their</p>

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			<p>substantive and qualitative review of the accounting. The court investigator prepares a report that is filed with the court after the accounting has been reviewed. The report should raise concerns or questions based on the court investigator’s observations. It is inefficient and ineffective to write a report that anticipates what the probate examiner might question when the account is reviewed.</p> <p><i>G. Special concerns in reviewing the accountings of professional conservators and guardians and selecting accountings for audits or other special scrutiny</i></p> <p><b>Agree with proposed changes</b></p> <p>Comment: Examiners and investigators should routinely make use of tools that can validate an accounting. We should routinely compare the bank and financial statements to information on the accounting. For example, do check and disbursements amounts match up? Does the year-to-date reported income on brokerage statements match up with amounts reported on the accounting? I believe we should conduct random audits by requesting copies of receipts in support</p>	<p>reports concerns based on their actual observations after reviewing the accounting. Such concerns would be relevant to their determination in a review investigation following an accounting that the conservator is or is not acting in the best interests of the conservatee. The guidelines merely recommend that in addition, initial concerns about a conservator’s ability to prepare and file an accounting should be included in reports before the accounting is due.</p> <p>No response is required, but the committee will consider the specific recommendations for inclusion in a revised and updated version of the guidelines.</p>

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			<p>of disbursements or bank statements.</p> <p>The recommendation under G.1., to review professional fiduciary cases for patterns in placement, care providers, agents and related disbursements, is an excellent one.</p> <p>By way of background, I have worked as a court investigator for 20 years in two different counties. I am a former member of the Probate Mental Health Advisory Committee and currently serve on the CJER Probate and Mental Health Education Committee. I have taught accounting reviews with Judge William McKinstry (Ret.) at Probate Institutes in the past and have provided training to court investigators on accounting review. I appreciate your consideration of my comments and stand ready to assist the committee if you decide to revise the guidelines.</p>	
25.	<p>Christopher J. Wurbel Supervising Court Investigator San Bernardino County Redlands</p>	N	<p>Thank you for requesting our input on this subject. I do not agree with these recommendations for the following reasons:</p> <p>1) Attempting to coordinate reviews and accountings for the same time is highly impractical as reviews have always been set from the time a conservatorship was granted as set forth in the Probate Code.</p>	<p>1) The committee strongly believes that to the extent possible, review investigations and accountings should be coordinated. Moreover, that is official policy under Probate Code section 1851.2, if feasible. The committee</p>

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			<p>Although in theory the accountings are to be filed and heard roughly around the time reviews are to be performed in practice accountings are many times delayed and may drag along for extensive periods stretching more than a year particularly when objections are filed. Further, to try to coordinate the two at this point would mean a complete change in our existing data base which is set, as noted above, on a yearly basis for reviews except for limited conservatorships which are seen one year after its granting then biennially. It would be too chaotic to try to change our program now.</p> <p>2) The main issue is that of diverting resources from our current investigations. As there is no funding for this current mandate I would oppose any further duties being imposed on investigators, particularly at this time.</p> <p>I would, however, have no problem with doing extra investigation <b>if</b> the probate examiners/attorneys might have questions that may arise from an accounting such as the need to purchase a new home for someone that is incapacitated from, say, an accident or the need for a vehicle that may be needed to suit their disability. Another example might be what care a conservatee actually needs – if for example, a</p>	<p>would actually prefer greater flexibility in the scheduling of review investigations to ensure that more of them are coordinated with accountings. But section 1850(a)(2) requires a review investigation one year after appointment of a conservator and annually thereafter, with either a full or status report filed on each review. There is some flexibility because the review need not be completed before the anniversary date. See the response to the comment of Daniel McNamara, above.</p> <p>2) The guidelines are not mandates. They are recommendations that are subject to courts' staffing and budget issues.</p>



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			<p>conservator is paying someone to provide 24 hour care for a conservatee who is quite capable of handling most of their own personal care there would be obvious questions of how appropriate this would be. In addition our office has had a practice of inquiring about the conservatee's estate such as bank balances, income, etc. and asking to see records to verify that information. This is done regardless if an accounting is filed or not.</p> <p>In conclusion I would suggest a meeting of court investigators and probate examiners/attorneys to discuss this issue in more depth.</p>	<p>The committee strongly supports this recommendation, made by a number of commentators.</p>